

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION, CINCINNATI

EVERETT W. WHISMAN, et al., :  
Plaintiffs :  
-v- : Case No. C-1-02-406  
: (Judge Beckwith)  
: (Magistrate Sherman)  
ZF BATAVIA, LLC, et al., :  
Defendants :

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The deposition of **DICK NEWARK**, taken before Susan K. Lee, CVR-CM, Court Reporter and Notary Public in and for the State of Ohio, at the Holiday Inn Eastgate, 4501 Eastgate Boulevard, Cincinnati, Ohio, on the 24th day of July, 2003, beginning at the hour of 1:34 p.m. and ending at 4:36 p.m. of the same date.

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ALSO PRESENT:

MR. GARY VORIES  
MR. EVERETT W. WHISMAN  
MR. HERBERT HUEBNER

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STIPULATIONS:

It is stipulated by and between counsel for the respective parties that the deposition of **DICK NEWARK**, a witness herein, may be taken at this time pursuant to the Federal Rules of Civil Procedure and Notice; that the deposition may be taken via Stenomask by the Notary Public/Court Reporter, and transcribed by her out of the presence of witness; that the deposition was submitted to counsel for the witness for reading and signature.

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1       **DICK NEWARK**, called as a witness, being first duly  
2       sworn, testified as follows:

3 MR. SIMON: Mr. Newark, good afternoon.

4 My name is Steve Simon. I'm an attorney who  
5 represents a group of people who have a lawsuit  
6 against ZF Batavia and Ford Motor Company. And  
7 to my left is David Cook. He is also one of  
8 the attorneys representing the plaintiffs in  
9 this lawsuit. And I think you probably know  
10 Gary Vories and Wayne Whisman --

11 THE WITNESS: Yes.

12 MR. SIMON: -- who work at the plant.

13 BY MR. SIMON:

14 Q Could you spell your last name, sir?

15 A Sure. N-E-W-A-R-K.

16 Q And, sir, have you ever had your  
17 deposition taken before?

18 A Yes.

19 Q When was the last time you had your  
20 deposition taken?

21 A A few months ago, May.

22 Q Was that also in connection with a  
23 lawsuit that's filed in court, as far as you know?

24 A Just a legal proceeding.

25 Q What was the nature of the proceeding?

1                   A           It was a lawsuit.  
2                   Q           Against the company?  
3                   A           Yes.  
4                   Q           By a former employee?  
5                   A           Yes.  
6                   Q           Is this the Gene Gilliam lawsuit?  
7                   A           Yes.  
8                   Q           Okay. Any other depositions you've  
9                   ever given?  
10                  A           No.  
11                  Q           Are there any other times where you've  
12                  given sworn testimony in any kind of legal proceeding?  
13                  A           Yes.  
14                  Q           When was that?  
15                  A           It was in the '90s. Divorce  
16                  proceedings. She won everything.  
17                  Q           Were those proceedings local?  
18                  A           No, sir.  
19                  Q           Do you know what county or state they  
20                  were in?  
21                  A           They were in Warren County,  
22                  Pennsylvania.  
23                  Q           Do you know when the matter was  
24                  ultimately resolved?  
25                  A           It would have been 1994, May of 1994.

1 Q Okay. Any other time, other than the  
2 divorce proceeding, that you gave sworn testimony,  
3 other than the Gene Gilliam lawsuit?

4 A No.

5 Q Have you ever testified at an  
6 arbitration?

7 A No.

8 MR. SIMON: Since you've already done  
9 this once before, actually just a few months  
10 ago, then you're probably familiar with the  
11 ground rules, but I'll lay them out for you  
12 again one more time.

13 I'm going to be asking you questions.  
14 You're going to be answering them under oath.  
15 The court reporter to your left will be taking  
16 them down and what she takes down will be  
17 produced in a transcript that you'll have an  
18 opportunity to review. It's real important  
19 that you, where possible, give a verbal  
20 response --

21 THE WITNESS: Sure.

22 MR. SIMON: -- either a yes or a no, as  
23 opposed to other noises that we might  
24 understand in conversation but won't make sense  
25 in a transcript. So you'll answer yes or no

1 where you can, sir?

2 THE WITNESS: Yes.

3 MR. SIMON: Okay. Also, this one is  
4 really important. If you don't understand my  
5 question, either you didn't hear it or you just  
6 don't understand it, please ask me to rephrase  
7 or re-ask the question because if you don't,  
8 someone reviewing the transcript will think  
9 that -- they'll see the question, your answer,  
10 and they're going to assume you understood the  
11 question. So if there's any point where you  
12 don't understand my question, will you ask me  
13 to rephrase?

14 THE WITNESS: Yes.

15 MR. SIMON: And the final thing is I  
16 don't know how long we're going to be here  
17 today, hopefully not terribly long, but if at  
18 any time you need a break for whatever reason  
19 and there's not a question pending, please tell  
20 your counsel and we can make accommodation.  
21 Okay?

22 THE WITNESS: Okay.

23 BY MR. SIMON:

24 Q I won't ask this open-ended because I  
25 think I know the answer. You are currently the plant

1 manager?

2 A Yes.

3 Q And are you also called the director of  
4 operations, operations manager?

5 A I'm also called manufacturing director  
6 on some of the organization charts, so you may see that  
7 title.

8 MR. SIMON: Off the record for a  
9 second.

10 (OFF THE RECORD)

11 BY MR. SIMON:

12 Q This is Exhibit 17 from the deposition  
13 in the morning. Is this an organization that's  
14 applicable to the current state of things at ZF  
15 Batavia?

16 A Not currently, no.

17 Q Well, it has director of manufacturing  
18 there; do you see that?

19 A Right.

20 Q And I'm sorry. Is that a title you're  
21 sometimes referred to as?

22 A That was -- this organization chart  
23 would be consistent with the original -- my date-of-  
24 hire position. And it was advertised and I was  
25 selected as the director of manufacturing. So this

1       would have been my initial staff in 1999.

2           Q        And when did it change?

3           A        Probably formally in the 2001, late  
4        2001, time period.

5           Q        Look at Plaintiffs' Exhibit 18.  Is  
6        that current or is that the same time frame as your  
7        date of hire?

8           A        This -- yeah, this would have been  
9        right after my date of hire.  It's definitely not  
10      current.

11          Q        Looking at Exhibit 18, are the levels  
12      correct, though?  Do you report to Mr. Adams?

13          A        No, sir.

14          Q        Who do you report to?

15          A        I report to the chief operating  
16      officer, who is Ludger Reckmann, L-U-D-G-E-R  
17      R-E-C-K-M-A-N-N.  And that's in about -- since about  
18      last -- I would say March of 2002.

19          Q        Prior to March 2002 who did you report  
20      to?

21          A        To the president, Dave Adams.

22          Q        And that was true from your date of  
23      hire until March 2002?

24          A        Yes.

25          Q        On Plaintiffs' Exhibit 17, the other

1       one, how is it different today that isn't accurately  
2       reflected on Exhibit 17?

3           A       I'm sorry. I don't understand.

4           Q       You said Plaintiffs' 17 was accurate at  
5       your date of hire?

6           A       Right.

7           Q       What's different today then?

8           A       The -- several of the individuals no  
9       longer report directly to me.

10          Q       Who is that?

11          A       Mr. Detloff, Mr. Williams, Mr. Priest  
12       is retired, Mr. Clark no longer reports to me, and Mr.  
13       Eisenhut no longer reports to me.

14          Q       Are there people with the same title  
15       who occupy those positions that do report to you?

16          A       Similar titles but not identical  
17       titles. We had restructured the business and we have  
18       more of a business structure decentralized today than  
19       what this organization had.

20          Q       And that decentralization -- you said  
21       it was decentralization in late 2001?

22          A       Right. It actually was accomplished in  
23       a couple of steps, but the major one was in late 2001.

24          Q       You said Gerry Priest was retired.

25       Does Gerry Priest still work in the building?

1                   A           Yes. He does contract service.

2                   Q           One of the things that I was going to  
3                   be talking about today, Mr. Newark, is there's a number  
4                   of employees, salaried employees, that used to be with  
5                   Ford in 1999.

6                   A           Right.

7                   Q           And then they left Ford and joined ZF  
8                   Batavia in 1999 and I think they're referred to in the  
9                   plant as Ford transitinals.

10                  A           (Nods head)

11                  Q           Is that yes?

12                  A           Yes.

13                  Q           So Mr. Priest was a Ford transitional  
14                  employee, right?

15                  A           Yes.

16                  Q           And since 1999 he retired?

17                  A           Yes, he retired in January of this  
18                  year.

19                  Q           But he still works there under some  
20                  sort of separate arrangement?

21                  A           Right.

22                  Q           And I guess recently he's been moved to  
23                  a position in the CVT pre-production area?

24                  A           He's working in the CVT area. He's  
25                  still technically on my staff and I am paying the

1 salary for him to do that. There were several  
2 individuals put together on a team to support CVT  
3 recently.

4 Q Okay. Well, let's just stay with that  
5 topic. Was there a visit by someone from Ford recently  
6 that led to some employees such as Gerry Priest being  
7 moved around relative --

8 A Not that I'm aware of.

9 Q Was there anybody from Ford who  
10 recently came to the plant who said -- who reviewed  
11 your staffing of the CVT area and said "Where's the  
12 experienced people?"

13 A There was a visit by -- it was a board  
14 of directors meeting which would have had several Ford  
15 senior managers and there was a comment made by one of  
16 the managers, I don't recall which one, that related to  
17 "Where's the gray hair?" I think was the quote. And  
18 that was, I would guess, a year and a half ago.

19 Q The manager was somebody who works for  
20 Ford?

21 A Yes.

22 Q Someone who sits on the board of  
23 directors for ZF Batavia but doesn't work in the  
24 Batavia plant?

25 A Yes.

1 Q What was his name?  
2 A I don't -- I don't recall who said it.  
3 Q Okay. And he was talking about the  
4 CVT?  
5 A Yes.  
6 Q And when he said "Where's the gray  
7 hair?" he meant where's the older, experienced  
8 employees?  
9 A Yes.  
10 Q And was he also referring to why aren't  
11 more Ford transitionals on CVT since they're older,  
12 experienced employees?  
13 A No, I don't think so. In fact, I think  
14 he was really looking for where's the Germans. I think  
15 that was really the criticism.  
16 Q Did he say -- did he reference the  
17 Germans?  
18 A Mm-hmm.  
19 Q That was a yes?  
20 A Yes.  
21 Q Well, let's back up a second. You've  
22 got employees -- you've got hourly and salaried  
23 employees in the facility, right?  
24 A Yes.  
25 Q And hundreds of the hourlies, I guess,

1           they're members of the UAW?

2           A           All of the hourly are members of the  
3           UAW.

4           Q           And they're still Ford employees,  
5           right?

6           A           Not all of them.

7           Q           Hundreds, though, right?

8           A           There's about 700 Ford UAW employees.

9           Q           Out of how many total hourly?

10          A           About 1050.

11          Q           Okay. And then we've got a number of  
12           salaried people who never worked for Ford, they only  
13           worked for ZF?

14          A           Yes.

15          Q           And people call them ZF new hires?

16          A           There's -- perhaps what you're getting  
17           at is there's a group of folks such as myself that  
18           never worked for either Ford or ZF. There's another  
19           group that worked for ZF and then there's a group that  
20           worked for Ford.

21          Q           The ones that worked for ZF, you're  
22           talking about the parent company?

23          A           Yes.

24          Q           And are those the Germans?

25          A           Not all -- not exclusively.

1                   Predominantly they're expatriates but not exclusively.

2                   Q                Okay. So was this manager at this  
3                   board of directors meeting referring to the  
4                   expatriates?

5                   A                My belief -- and, I mean, I was just in  
6                   a tour group and heard the comment. It wasn't even  
7                   directed at me. My belief was he was interested in  
8                   knowing the parental support from Germany to  
9                   successfully launch the technology, meaning the -- the  
10                   experienced engineers from Germany. The expatriates we  
11                   have tend to be a young group.

12                  Q                Okay. You said you heard the comment  
13                  -- I thought you said it was at a board meeting, this  
14                  comment.

15                  A                It was a tour of the CVT during a board  
16                  meeting.

17                  Q                Oh, okay. So Gerry Priest moving to  
18                  the CVT area recently has nothing to do with any  
19                  concerns raised by Ford or anyone else that they're  
20                  aren't enough Ford transitional people on the CVT  
21                  program?

22                  A                No. I think the concern on the whole  
23                  CVT launch is it's vital to the future of the company  
24                  and there is an effort to ensure the successful launch  
25                  by putting, you know, veteran, seasoned people that

1 have been there, done that, and regardless of their  
2 past background, wherever they may have gained their  
3 experience.

4 Q Are there many Ford transitional people  
5 who work on the CVT program currently? And I'm talking  
6 about salaried.

7 A Yes.

8 Q Who are they?

9 A Well, there's several. Ron Clark would  
10 be an example as a senior manager.

11 Q Does he work full time on the CVT?

12 A Yes, yes.

13 Q Anybody else?

14 A Joy Giddings is a department manager.

15 Q Joy is a Ford transitional employee?

16 A I believe so. She started slightly  
17 before I did, so --

18 Q Okay. And you believe Ron is also a  
19 Ford transitional?

20 A I know Ron is a Ford transitional.

21 Several of the engineers. If you have -- I don't know  
22 if we have an engineering organization chart but --

23 Q Aren't the engineers still Ford  
24 employees?

25 A Some of them are, yes.

1                   Q            But you think there are some engineers  
2                    who are employees of ZF Batavia who are Ford  
3                    transitionals?

4                   A            Sure. Alan Selby would be another  
5                    example. Chuck Thompson would be an example.

6                   Q            Well, just generally then, since 1999  
7                    do you think that the CVT program has had  
8                    proportionally fewer Ford transitional employees on the  
9                    CVT than, say, ZF employees or ZFB new hires?

10                  A            No, I don't think so. I'd have to do  
11                  the math, but I don't think so.

12                  Q            Has anyone ever told you that they  
13                  thought that there weren't enough Ford transitional  
14                  employees on CVT?

15                  A            No.

16                  Q            I just wanted to cover that subject  
17                  since it had come up. Moving back to 1999, you said  
18                  that you -- the plant manager position had been  
19                  advertised; is that right?

20                  A            It was a retained search by a  
21                  recruiting company.

22                  Q            Where were you at the time?

23                  A            Cummins Engine Company.

24                  Q            Where is that located?

25                  A            Immediately prior to joining ZF I was

1       in Fostoria, Ohio at a crank shaft subsidiary that  
2       Cummins had. Most of my experience was in Jamestown,  
3       New York.

4                   Q        How long had you been in Fostoria?

5                   A        About one year.

6                   Q        And I'm sorry. What was the position  
7       you held at that time?

8                   A        Plant manager.

9                   Q        But you previously had been in, you  
10      said --

11                 A        Jamestown, New York.

12                 Q        What was your position when you left  
13      Jamestown to go to Fostoria?

14                 A        Director of shop operations.

15                 Q        When you last held the position of  
16      director of shop operations in Jamestown, New York --  
17      this was for Cummins?

18                 A        Yes.

19                 Q        How many employees did they have  
20      roughly?

21                 A        The total employment at the site?

22                 Q        Mm-hmm.

23                 A        About 1000.

24                 Q        What about when you were at Fostoria?

25                 A        About 350.

1                   Q           Was it a demotion to go to Fostoria or  
2                    were you just filling a need?

3                   A           I was filling an opening. The Fostoria  
4                    plant was a wholly-owned subsidiary that was being sold  
5                    to Thyssen Krupp and they wanted me to run the plant  
6                    while it was pending the acquisition.

7                   Q           So why did you ultimately decide to  
8                    leave Cummins and join ZF Batavia?

9                   A           It was a personal decision, but it was  
10                   an opportunity to join a growing technology and a new  
11                   company, a greater challenge.

12                   Q           Were you also seeing a diminished  
13                   opportunity with Cummins?

14                   A           Not directly, no. Cummins had a pretty  
15                   typical business circumstance going on at the time, but  
16                   quite honestly, there was a lot of opportunities that I  
17                   was choosing not to pursue within Cummins.

18                   Q           How many employees did ZF Batavia have  
19                   when you started as plant manager?

20                   A           I would say about 700. That obviously  
21                   would include the Ford employees when I started.  
22                   Predominantly it was Ford employees. There were no --  
23                   I think in the hourly ranks when I started, there were  
24                   25 UAW hourly folks.

25                   Q           And how many employees are there now,

1 hourly and salaried?

2 A About 1300 and -- almost 1400.

3 Q Who hired you?

4 A Dave Adams.

5 Q A series of meetings, interviews?

6 A Yes, yes.

7 Q Did you get a written employment  
8 agreement?

9 A No.

10 Q Did they make any verbal assurances  
11 about what you could expect?

12 A Yes.

13 Q Just generally what were those?

14 A Just salary, benefits, I guess I would  
15 say working conditions in terms of the nature of the  
16 job.

17 Q And what would that include?

18 A Things -- you know, just the  
19 technology, the level of challenge, the turnaround  
20 expectations. I think, in fairness, he wanted me to  
21 understand what I was getting into.

22 Q Okay. And did it come to pass that you  
23 got the salary and benefits that he had told you about?

24 A Yes.

25 Q And the working conditions, did he

1           fairly describe what you were in for?

2           A        It was a little understated.

3           Q        It was a little more challenging than  
4        you --

5           A        Yes.

6           Q        But otherwise, the things that he had  
7        told you, basically your terms of employment, what he  
8        had told you in '99 turned out to be correct, right?

9           A        The terms of employment I would -- I  
10        would state were correct.

11          Q        Okay. And I suppose if there ever was  
12        a situation where something happened to your terms of  
13        employment where it was different than what Mr. Adams  
14        had told you, I suppose you would raise that concern  
15        with Mr. Adams?

16          A        I suppose I would, yeah.

17          Q        Because you certainly had the  
18        expectation that he was going to do what he told you  
19        verbally in '99, right?

20          A        Yes.

21          Q        I don't think I've asked you. Do you  
22        know your specific date of hire?

23          A        October 11th, 1999.

24          Q        All right. Were you aware when you  
25        came on board or even before you came on board of any

1       efforts by the new company and also Ford to have  
2       certain members of the salaried workforce from Ford  
3       join ZF Batavia?

4           A        I was aware that there was a recruiting  
5       effort and that there was an effort to have, I guess,  
6       an orderly transition. I knew that there was an issue  
7       with the exodus of several of the Ford people and I  
8       know that they were working to overcome that when I  
9       started.

10          Q        They were overcoming what?

11          A        The -- what I interpreted as an exodus  
12       of particularly the engineering talent.

13          Q        Well, what were you told about losing  
14       engineers? Was there a reason the engineers weren't  
15       staying?

16          A        I really didn't have any specific -- it  
17       was more of a general comment that the engineers within  
18       Ford had elected to, you know, return to Ford sites  
19       predominantly and that the -- these are the process --  
20       you know, mechanical and process kind of engineers.  
21       But they had elected, for whatever decisions they made,  
22       to return to Ford.

23          Q        Were you told that otherwise, though,  
24       that ZF Batavia was hoping to get the best of the bunch  
25       from the salaried workforce --

1                   A           Yes.

2                   Q           -- to have them come over?

3                   A           Yes.

4                   Q           And it was your understanding that a  
5                   number of the top performers in the salaried workforce  
6                   did come over, excluding the engineers?

7                   A           I never -- I've never seen any sort of  
8                   Ford performance. You know, I hear sort of, you know,  
9                   this guy is really good or that guy is really good, but  
10                  I've never seen any sort of documented performance of  
11                  the Ford, you know, side of the ledger but -- so I  
12                  don't -- I don't really know. I'm assuming we -- I  
13                  would hope we got the best of best.

14                  Q           That's what you were told anyhow?

15                  A           Yes.

16                  Q           Okay. Were you ever shown this  
17                  document? This is Plaintiffs' Exhibit 2, Mr. Newark.  
18                  I'm sorry, Deposition Exhibit 2.

19                  A           No. I think I saw this document this  
20                  week for the first time.

21                  Q           Well, had anyone told you when you  
22                  started in October '99 that the company has offered  
23                  these Ford employees a certain package of compensation  
24                  and benefits to bring them on board at ZF Batavia?

25                  A           At some point, I think, I became aware.

1       It certainly wasn't one of the first things in October  
2       that I became aware of.

3                   Q        At some point you think you learned  
4       about it?

5                   A        Right. There was, I think, a sequence  
6       of several of the folks had joined the -- made the  
7       transition before I started and then there were others,  
8       for various reasons, that had dates that extended out,  
9       you know, into the 2000 -- you know, late '99, 2000  
10      time frame. So I think as those dates and people were  
11      recruited, it was known that they had, you know, joined  
12      the new company.

13                  Q        Has anyone ever explained to you that  
14       the people -- the ZF Batavia new hires were given a  
15       separate compensation and benefits package, whereas the  
16       Ford transitionals were offered some other set of  
17       compensation and benefits?

18                  A        Actually, no, I didn't know that. I  
19       know the brochure that was mailed with my employment  
20       offer was different than this.

21                  Q        Did you have -- just so you understand,  
22       this Deposition Exhibit 2 was actually a tri-fold  
23       brochure that had some color on it.

24                  A        Right.

25                  Q        Did you also get a similar brochure and

1                   form?

2                   A               Not a tri-fold. It was a glossy, you  
3                   know, 8 1/2 by 11 folded, and I believe it's the same  
4                   one we're using today. It may have been modified, but  
5                   --

6                   Q               How do you use it today?

7                   A               With -- with new employment offers.  
8                   It's a benefits type of brochure that's available in  
9                   human resources. It's a plan summary type of document.

10                  Q               Turning to the second page of  
11                  Plaintiffs' Exhibit 2 -- I should stop for a second.

12                  MR. SIMON: Mr. Hunter, have we been  
13                  given the document that Mr. Newark has  
14                  referenced, the 8 1/2 by 11 summary?

15                  MR. HUNTER: You've been given  
16                  thousands of pages. I don't specifically  
17                  remember, Steve, if that document is in there.  
18                  I'm not --

19                  MR. HUEBNER: I don't recall whether it  
20                  was asked for or not, but you can tell what  
21                  he's asking for because the pattern is the  
22                  same. I think they used the same slick paper  
23                  for this as they did with that. I think they  
24                  went to the same printer, so --

25                  MR. SIMON: I think I know which one

1 you're talking about. Okay. That's fine.

2 BY MR. SIMON:

3 Q In any event, turning to the second  
4 page then, Mr. Newark, you see where it says at the top  
5 "Compensation" on the far left? You can barely make it  
6 out.

7 A Yes, yes.

8 Q And do you see where it says "Broad  
9 banding replaces salary grades"? Do you see that?

10 A Yes.

11 Q You said this week was the first time  
12 you had seen this document?

13 A Yes.

14 Q Had anyone ever previously explained to  
15 you that at Ford they used to have salary grades,  
16 whereas ZF Batavia has broad banding?

17 A Yes.

18 Q Do you see where it says "Authorized  
19 overtime will be paid"?

20 A Yes.

21 Q Is authorized overtime paid for  
22 salaried employees at ZF Batavia?

23 A Yes.

24 Q Is it fair to say that even though you  
25 -- well, let's go through another one. Do you see

1       where it says "Annual incentive plan"?

2           A       Yes.

3           Q       "Reward program based on ZF Batavia's  
4       success, determined by product quality, timing and  
5       delivery of new and existing products and  
6       profitability." ZF Batavia has such a plan, right?

7           A       Yes.

8           Q       And do you see some other benefits kind  
9       of set forth throughout the document there?

10          A       (Nods head)

11          Q       That's a yes?

12          A       Yes.

13          Q       For instance, where it says "Leaves,"  
14       do you see that in the middle column on the bottom?

15          A       Not yet. Okay. Yes.

16          Q       All right. Do you see where it says  
17       "Personal or sick" and it says up to five days, right?

18          A       Yes.

19          Q       Is that ZF Batavia's current policy is  
20       that salaried employees get up to five personal or sick  
21       days?

22          A       Yes.

23          Q       And so is it fair to say that even  
24       though you haven't seen Exhibit 2 before, you were  
25       generally aware before this week that these terms of

1 employment applied to Ford transitional salaried  
2 employees?

3 A Being the key ones that you've just  
4 pointed out or others?

5 Q Well, you would have at least been  
6 aware of those, right, that I had pointed out?

7 A I'm aware that there was banding. I'm  
8 aware that there was --

9 Q Authorized overtime?

10 A Yes. And the incentive. Yes. That's  
11 fair.

12 Q Is there anything on this document --  
13 and there's a first page as well to this. But is there  
14 anything here that stands out or when you saw it for  
15 the first time in the last week stands out as a big  
16 surprise you weren't aware of?

17 A This four-point font is getting me so,  
18 --

19 Q We just had a discussion about font  
20 size. Take your time.

21 A I'm sorry. Could you restate your  
22 question again?

23 Q I was just giving you a moment to  
24 review Deposition Exhibit 2, which is this glossy  
25 brochure that we'll represent was ultimately given to

1       Ford transitional employees. Anything in here that  
2       came as a surprise to you? You've identified several  
3       that you knew about, authorized overtime, et cetera.

4                   A        Right.

5                   Q        I just didn't know if there was  
6       anything in here that jumped out at you as you had no  
7       idea that had ever been part of the package.

8                   A        No, I don't think so.

9                   Q        The summary that you received, it was  
10       kind of a summary of plans -- it was a summary of  
11       benefits you might receive through like health plans  
12       and that sort of thing?

13                  A        Right.

14                  Q        That's what you received?

15                  A        Right.

16                  Q        Okay. Do you see on the third column  
17       on the lower right-hand side, do you see where it says  
18       "This brochure includes only the key features"?

19                  A        Yes, I see that.

20                  Q        It refers to ZF Batavia benefit plans  
21       as applicable. Do you see that? It was those kind of  
22       benefits, your health benefits, your pension benefits,  
23       those were the kind of things that were set forth in  
24       the summary that you received?

25                  A        Yes.

1                   Q         For instance, in the summary you  
2         received you don't remember if it said anything about  
3         authorized overtime will be paid?

4                   A         No, I don't remember that.

5                   Q         And your overtime is not paid, is it?

6                   A         No.

7                   Q         That's what you get for being plant  
8         manager, right?

9                   A         (Nods head)

10                  Q         Okay. Well, let me ask you then, Mr.  
11         Newark, staying with just this page two: You've been  
12         plant manager from 1999 to current, even though your  
13         title might be --

14                  A         Slightly different.

15                  Q         Yeah. But basically you've had the  
16         same job since you were hired, correct?

17                  A         Yes, yes.

18                  Q         And are you aware of any of these terms  
19         such as authorized overtime will be paid -- are you  
20         aware of any changes regarding that policy since 1999?

21                  A         We have, I would say, administered it  
22         more aggressively in the last -- I'd say in 1999 there  
23         was, with the start-up of the joint venture, a lot of  
24         confusion and general kind of, you know, administrative  
25         type of questions. And I would say since, oh, 2000,

1       2001 we've attempted to clarify things like casual  
2       overtime, clarify the management role overtime  
3       expectations around pay, those types of things.

4                   I think the policy is generally  
5       consistent with the Ford policy, but I think there was  
6       a period of time when the administration of it was  
7       probably confused by a bunch of folks that came into  
8       the organization that didn't quite understand.

9                   Q        Are you talking about former Ford  
10      employees were confused?

11                  A        Probably more the outsiders, folks like  
12      myself.

13                  Q        What is the rule regarding casual time?  
14                  A        I wouldn't call it a rule. I think the  
15      general expectation is -- is half an hour before the  
16      start of the shift and up to a half an hour at the end  
17      of the shift. And, you know, it's just sort of the  
18      lineup period.

19                  Q        Well, if the employee works a half hour  
20      before the shift and a half hour after the shift and in  
21      addition works an additional hour, is that additional  
22      hour paid?

23                  A        It's -- to receive the overtime pay you  
24      actually have to work the complete hour, so it would be  
25      ten hours. You would have to work ten hours to get the

1       first hour paid, if that was the way I understood your  
2       question.

3           Q        Right. I've got you. And it's your  
4       understanding that's consistent with Ford policy?

5           A        Yes.

6           Q        Has an effort been made by ZF Batavia  
7       to try to be consistent with the Ford policy on certain  
8       things like overtime?

9           A        I think some effort. I think in  
10       general it's just business practices that we, you know,  
11       attempt -- if Ford had a particularly, you know,  
12       acceptable or good business practice, we would attempt  
13       to adopt it. If we thought we needed to do something  
14       slightly different, we would do something slightly  
15       different. It wasn't as if we came in and copied  
16       everything Ford was doing. I don't want to leave that  
17       impression.

18           Q        Well, were you concerned that if you,  
19       for whatever reason, began deviating from what Ford's  
20       policy used to be, did you have any concern that this  
21       wasn't the employees' expectation who came over from  
22       Ford? Did you have that concern?

23           A        Yeah, I think so.

24           Q        Now, we were talking about overtime.

25       Isn't it true that last year there was a period of time

1       where there was diminishing money in the overtime  
2       budget and at least one department was told that you're  
3       going to have to continue to work overtime and not be  
4       paid?

5                   A        Yes.

6                   Q        So that certainly wasn't consistent  
7       with that sentence we have there where it says  
8       "Authorized overtime will be paid," right?

9                   A        It wouldn't appear so, no.

10                  Q        And we talked about this subject at the  
11       previous deposition. I understand that, as I said, the  
12       overtime budget was dissipating and --

13                  A        It had dissipated.

14                  Q        Okay. \$80,000, \$100,000 was left; does  
15       that sound right?

16                  A        Not in that particular department, no.

17                  Q        And we're talking about the maintenance  
18       department?

19                  A        Maintenance and the materials  
20       department.

21                  Q        So both departments, in the materials  
22       and the maintenance department, say, roughly perhaps  
23       May of last year were told that you're going to have to  
24       continue to work overtime, including weekends, and not  
25       be paid because we've run out of money in the overtime

1 budget?

2 A It was, I think, a little earlier in  
3 the year. I think it was in the March/April time  
4 frame.

5 Q All right. And did that policy  
6 continue to this very day?

7 A No. The -- and the statement, I think,  
8 was closer to we're going to have to figure out a way  
9 to -- I mean, in the short term obviously it created a  
10 huge problem. In the more proactive approach we were  
11 attempting to figure out how to rotate and have  
12 coverage on the weekends without forcing people into  
13 overtime, and we never got that up and running. But we  
14 ended up in the roughly May time frame with an infusion  
15 of money into the budgets and tried to remedy it that  
16 way.

17 Q This lawsuit was filed in the summer of  
18 last year, I'll represent.

19 A Okay.

20 Q Did you ever hear -- June of 2002. Did  
21 you ever hear any rumblings before the lawsuit was  
22 filed that there were some salaried employees who were  
23 upset who were considering litigation?

24 A Not that were considering litigation.  
25 There were certainly rumblings of employee

1 dissatisfaction.

2 Q And was overtime one of the issues?

3 A Yes, yes.

4 Q This overtime issue that we're talking  
5 about, right?

6 A I think in -- there was a specific  
7 instance where the budget ran out and that was a huge  
8 dissatisfier. There was also a general tone where  
9 we're working a lot of overtime and -- and it was paid.  
10 So it was -- I would characterize it quality of life  
11 type of dissatisfaction.

12 Q Had you ever heard any complaints about  
13 this casual time which we had discussed where you have  
14 to work ten hours to get paid for the one hour extra  
15 overtime?

16 A I don't -- yeah, I heard complaints, I  
17 think, different comments.

18 Q And you're saying that it was May of  
19 last year that you reversed course on the overtime; you  
20 found money in the budget to start paying people to  
21 work overtime?

22 A I believe so.

23 Q Is there a document that would reflect  
24 when you were -- if, in fact, that was May of last year  
25 that you reversed course?

1                   A           There would be a couple documents. I  
2                   think there would be some financial documents  
3                   indicating when the budget ran out and there would be  
4                   some financial documents that would show when we put  
5                   money back into the budgets. I think the gap period  
6                   was three weeks.

7                   Q           Starting with June 2002 working back,  
8                   perhaps in the previous year, June 2001 to June 2002,  
9                   has ZF Batavia been modifying its policies regarding  
10                   salaried employees?

11                  A           I think attempting to clarify. I don't  
12                  -- in the most part I think we were trying to be more  
13                  specific about expectations and -- and clarify  
14                  policies. I think there was probably one or two that  
15                  may fall under your definition of modify.

16                  Q           Which ones were those?

17                  A           There was one period of time on  
18                  personal days that went from five to three. I would  
19                  characterize that as a modification.

20                  Q           Any others that would fall into that  
21                  category?

22                  A           I guess not immediately that come to  
23                  mind.

24                  Q           Was bereavement leave also modified?

25                  A           Not that I'm aware of.

1                   Q           So what was the situation with the sick  
2                   or personal days?

3                   A           It was a decision made to attempt to  
4                   improve attendance and move towards a reduced benefit  
5                   on the five days versus three days. So it was -- it  
6                   was a decision to move towards that as the benefit,  
7                   rather than the five days. And roughly I would say we  
8                   did that for about a year.

9                   Q           Were you part of these discussions to  
10                  change it to three days?

11                  A           Somewhat.

12                  Q           Would Karl Kehr have been involved?

13                  A           Yes.

14                  Q           And I think you have some sort of  
15                  policy committee who's involved in these things.

16                  A           Yes.

17                  Q           Mr. Huebner would certainly be one?

18                  A           Yes.

19                  Q           Maybe Mr. Sennish?

20                  A           Right.

21                  Q           Ann Appleton?

22                  A           I think she is now.

23                  Q           Okay. During any of these  
24                  conversations that you may have had with one or more of  
25                  these people, did anybody tell you about this document,

1                   Deposition Exhibit 2, which is this summary of benefits  
2                   and compensation for the Ford transitionals?

3                   A            No.

4                   Q            Did anyone tell you, hey, what about  
5                   this document?

6                   A            No, I don't recall that question.

7                   Q            Well, you see that it says five  
8                   personal days in the middle column at the bottom,  
9                   right?

10                  A            Yes.

11                  Q            As we sit here today -- I'll just  
12                  represent to you again that Deposition Exhibit 2, the  
13                  summary, was given to Ford transitional employees in  
14                  '99 before they were hired.

15                  As you sit here today, any concern that  
16                  people were told there was going to be five sick or  
17                  personal days and then that policy was apparently  
18                  changed for a period of time to three personal days  
19                  with no regard to this document? Does that cause you  
20                  concern now that you know the document exists?

21                  A            Well, I mean, the document also says it  
22                  can change, I think, so I'm not sure -- I'm not sure of  
23                  your question. We have the -- do we have the  
24                  obligation to change policies; is that your question?

25                  Q            I'm just wondering as you sit here

1 today, are you concerned that this document exists,  
2 Deposition Exhibit 2, yet the policy was changed from  
3 five to three? Is your answer no?

4 A I'm concerned, yes.

5 Q What are you concerned about?

6 A I'm not sure that consideration was  
7 given and I'm not sure that the communication and --  
8 and like I said, I don't recall the question being put  
9 forth regarding, hey, wait a minute, we've got a policy  
10 summary with these folks, and so that's my concern,  
11 yeah.

12 Q Somebody should have told you that, in  
13 your mind?

14 A Right. But I don't know as that  
15 precludes the opportunity to change a policy.

16 Q You don't know the legal answer to that  
17 is what you're saying?

18 A No, it's not legal at all. My answer  
19 is clearly we have the right and responsibility to  
20 change policies and it communicates that.

21 The concern I have is the fact that  
22 when we were making the decision to change the policy,  
23 we didn't apparently consider that.

24 Q Okay. I understand. Would you agree  
25 also regarding the overtime? Or is that different

1 because you already knew that the overtime should have  
2 been paid and then there was a period where --

3 A On the budget piece?

4 Q Yeah.

5 A Yes. The -- the administration of the  
6 overtime I don't think in that period was managed very  
7 well at all.

8 Q Okay. Well, sorry to put you in this  
9 position, but is there anyone there who you think could  
10 have handled it better?

11 A I'm sorry?

12 Q Is there someone -- is there a  
13 department or someone --

14 A We had several departments who managed  
15 it better.

16 Q Oh, you think the overtime could have  
17 been managed better?

18 A Absolutely.

19 Q Oh, okay. I thought you meant that how  
20 the policy was instituted regarding taking away the  
21 overtime, you thought that could have been handled  
22 better.

23 A I think the whole circumstance could  
24 have been managed better, yes.

25 Q So that would include HR, I guess?

1                   A           Predominantly it includes my  
2                   organization. Human resources -- human resources did  
3                   not establish the budget. We had a budget to meet and  
4                   we blew the budget and we exceeded the budget.

5                   Q           Okay. Now, I think I know the answer  
6                   to this, but I didn't clarify this earlier. You came  
7                   in in October 1999. Were you a part of any meetings or  
8                   any one-on-one conversations where the company, whether  
9                   it was a Ford person or a ZF Batavia person, told a  
10                  Ford employee, hey, listen -- who explained to them  
11                  what their package would be if they joined ZF Batavia?

12                  A           No.

13                  Q           That had already happened before you  
14                  joined?

15                  A           There were follow-up meetings, but I  
16                  was never part of them.

17                  Q           Okay. You see that -- staying with  
18                  Exhibit 2 then, we're going to stay in the far left  
19                  column where it says "Merit increase program."

20                  A           Yes.

21                  Q           It says "A merit program is established  
22                  and the amount will be announced annually," right?

23                  A           Yes.

24                  Q           And, in fact, there is a merit program?

25                  A           Yes.

1                   Q           Salaried employees are given merit  
2                   increases annually?

3                   A           Yes.

4                   Q           Based on performance?

5                   A           Generally.

6                   Q           Are you aware of any policy or  
7                   recommendation that would come from the HR department  
8                   or otherwise that advises managers that when they're  
9                   making their recommendations for merit increases for  
10                   their subordinates, that they're to make a smaller  
11                   percentage of increase for Ford transitional employees  
12                   as compared to ZF, the new hires?

13                  A           No. I think there's certainly a salary  
14                  disparity that we tend to work in and, you know, for  
15                  equal jobs you find very different salaries, but we  
16                  don't attempt to adjust the merit based on that.

17                  Q           When you had talked to Dave Adams when  
18                  you were hired, you talked about the challenges of  
19                  making this plant work, those kind of conversations?

20                  A           Right.

21                  Q           During those conversations, and it  
22                  might have been even right after you were hired, did he  
23                  talk about the level of salaries that the Ford salaried  
24                  employees earned?

25                  A           He talked in general about company

1 salaries. I do recall a conversation regarding that.  
2 I don't know as it was specific on the -- it was sort  
3 of an evolving awakening, I guess, on my part as to  
4 when I realized that there were sort of two striations  
5 to the salary ranges, but it wasn't immediately. It  
6 wasn't something I recall talking to Dave Adams about.

7 MR. VANWAY: I'm sorry. Mr. Newark,  
8 when the air conditioner kicks on, it's a  
9 little hard to hear at this end.

10 THE WITNESS: Yeah. I'm struggling  
11 with a sore throat, too, so -- I'll try to  
12 speak up a little bit.

13 MR. SIMON: I can hear you from here,  
14 but you'll just have to speak up a little  
15 louder.

16 BY MR. SIMON:

17 Q I think what you were saying is -- you  
18 didn't use this word, but you realized there was kind  
19 of two tiers, that the ZFB new hires -- you understand  
20 what I'm talking about when I say that?

21 A Right.

22 Q -- that they have a certain salary  
23 range and then the Ford transitionals have a different  
24 salary range?

25 A In general I think, you know, the Ford

1       people were more senior people, so there's some of that  
2       as well.

3                   Q        Although sometimes the ZFB new hires  
4       are able to negotiate deals that are actually better  
5       than what the Ford transitionals have?

6                   A        I don't know that.

7                   Q        You don't know that? But in any case,  
8       through your conversations with Mr. Adams in and around  
9       the time that you were hired did he express a concern  
10      that these Ford salaried employees make a lot more than  
11      the market for southern Ohio in the industrial sector?

12                 A        No, I don't think so. I don't recall  
13      that.

14                 Q        Well, has somebody ever told you that,  
15      you know, these Ford people make an awful lot compared  
16      to the market?

17                 A        Like I said, I think it evolved into an  
18      understanding. I don't know as anybody ever said that  
19      to me.

20                 Q        Okay. You came to understand that the  
21      Ford transitional employees brought with them a higher  
22      salary than what the market otherwise would get them if  
23      they started anew?

24                 A        No. I think I wouldn't characterize it  
25      as the market. I would characterize Ford as an OEM has

1       a salary structure that's different than a tier one  
2       supplier.

3           Q        Okay. When did you learn that there  
4        were these two tiers?

5           A        I would say probably in 2000.

6           Q        And at that time did you express a  
7        concern or anyone else say we've got to make sure that  
8        the Ford transitional employees and the ZFB new hires,  
9        that their salaries start to be in line with one  
10       another?

11          A        No, I don't think there was ever an  
12        intent to do that.

13          Q        You're not aware of anyone saying that  
14        the merit increases should be lower for the Ford  
15        transitionals than the ZFB new hires for that reason?

16          A        No.

17          Q        You're not aware of any effort  
18        whatsoever by ZF Batavia or Ford to have the Ford  
19        transitional employees' salaries get more in line with  
20        the lower ZFB new hires' salaries?

21          A        No. I think -- quite honestly, I think  
22        when it was -- or when I recognized it, at least, that  
23        there's an understanding that this is a senior group of  
24        people in general and that they eventually -- you know,  
25        we needed them to help get the company going, we needed

1       them to help in the transition. You can't just bring  
2       in all outsiders to try to do what we're doing. And  
3       that eventually our salary system will be more in line  
4       with a tier one supplier. But it wasn't to red circle  
5       or any other HR term and, you know, penalize in any way  
6       the Ford transition people.

7           Q        You said that you eventually wanted to  
8       be more in line with a tier one supplier, right?

9           A        That's the vision, yes.

10          Q        Well, how do you do that other than  
11       making sure that the Ford transitional employees start  
12       to come down a little bit or you have people leave the  
13       company?

14          A        Well, that's -- I mentioned that my  
15       view is in general they're a senior work force with a  
16       lot of seniority, and so as they attrit out naturally,  
17       that that's what will make the salary system be  
18       adjusted.

19          Q        How long did you think it would take  
20       before you would start to get in line with the tier  
21       one?

22          A        Ten to 15 years.

23          Q        Take a look at Deposition Exhibit 9.  
24       My question is: Have you seen that document before?  
25       Take a second to look at it or as much time as you

1 need.

2 A I believe I've seen this, yes.

3 Q You would agree, this says 2000 AIP  
4 award at the top, right?

5 A Yes.

6 Q You see that the Ford transitionals'  
7 percentage of award for each level of job is lower than  
8 the ZF?

9 A Yes.

10 Q Do you know there to be a reason for  
11 that?

12 A It was -- this was on the AIP  
13 discussion, which was very distinct from the merit  
14 discussion previously. But this was an attempt to  
15 recognize equal contribution, equal job and the  
16 slightly lower pay of the tier one or the ZF folks, so  
17 there was a budgeted amount that was different for the  
18 two groups.

19 Q You're saying that you wanted to make  
20 sure that if they're doing the same -- at the same  
21 level of performance for the same job, the actual lump  
22 sum they receive is the same, regardless of what their  
23 salary --

24 A It wasn't -- it wasn't attempted at all  
25 to make it the same. In many differences -- or many

1       cases the difference, you know, you're talking here,  
2       you know, less than a percent in most cases and those  
3       differences -- well, excuse me, I guess there's a  
4       couple percent on it. But those differences in base  
5       salary that is multiplied by these percentages of AIP  
6       payout, there's no way that a couple percent here makes  
7       the difference in the total compensation. I don't know  
8       if you understand the -- the math.

9                   Q        But the reason for the lower percentage  
10       for the Ford transitionals is because they generally  
11       have a greater salary than their corresponding ZFB new  
12       hire?

13                  A        Yes.

14                  Q        But there could be ZFB new hires who  
15       are at the same level as a Ford transitional that would  
16       make more money?

17                  A        Say again.

18                  Q        There certainly are some ZFB new hires  
19       who are at the same level of job, let's say have the AC  
20       -- AC is administrative clerical job?

21                  A        Yes.

22                  Q        There are certainly ZFB new hires who  
23       have that designation who actually have a greater  
24       annual salary than someone who is a Ford transitional?

25                  A        In that -- in that salary band I don't

1 believe so.

2 Q What about GSR?

3 A I think in GSR it could be the case.

4 Q So in that case could you help me  
5 understand why you would have a lower percentage for  
6 the AIP award for a Ford transitional employee who  
7 actually has a lower salary than the corresponding ZFB  
8 new hire?

9 A No. I think in general these were some  
10 guidelines that were targeted in the distributions and  
11 if that was the case, then I think the manager would  
12 have the -- would make the decision to do different.

13 Q So you think these percentages are just  
14 guidelines, that the manager is allowed some  
15 discretion?

16 A It evolved. In 2000 I think the --  
17 these were probably the calculations behind the actual  
18 payouts. Later years it evolved more into a management  
19 decision process, you know, based on some budgets or  
20 ranges. But in 2000 I believe these would have  
21 actually been the calculations used.

22 Q In 2000 the manager wouldn't have had  
23 discretion to change the percentage based on the  
24 individual's salary?

25 A That's what I recall.

1                   Q                Okay. In 2001, the 2001 AIP award that  
2                    was given out in 2002, is it not the case that certain  
3                    salaried employees received a lower AIP award because  
4                    it was determined by the company that certain  
5                    departments had too much overtime?

6                   A                The -- you're referring to 2002? I'm  
7                    sorry.

8                   Q                I don't know what you call it. It's  
9                    the 2000 award that was given in 2002.

10                  A                It wouldn't have been a 2000 award  
11                  given in 2002.

12                  Q                2001.

13                  A                It -- yes. I think 2002 roughly, you  
14                  know, March of that year when we distributed the  
15                  awards, we looked at what I would have called total  
16                  compensation as a -- as a factor and balanced that with  
17                  total contribution. And that was a bit more subjective  
18                  than clearly what this formula-driven process was. And  
19                  the notion there was to arrive at a decision regarding  
20                  primarily the performance aspect. In other words, what  
21                  was the contribution the individual made on safety,  
22                  quality, delivery and cost and what was their  
23                  compensation based on their effort to get to that. In  
24                  other words, their overtime pay and their total  
25                  compensation and the base. So there was a little bit

1 more subjectivity or management judgment brought into  
2 it last year.

3 Q But the managers then were permitted to  
4 lower, let's say, the AIP bonus for a salaried employee  
5 in maintenance if that manager decided that that  
6 salaried person has been working a lot of overtime and  
7 it's paid overtime, so because he's making more money  
8 total, we're going to lower his AIP bonus? Was that  
9 the instruction?

10 A I would -- I would state it the other  
11 way around. That was not the instruction at all. The  
12 statement, I think, was to consider total compensation  
13 as you make the decision based on their performance.  
14 In other words, to have an understanding -- I mean,  
15 somebody could have a very high base and not have  
16 worked any overtime, as an example. It's not likely,  
17 but that -- you know, there were people that worked  
18 different levels of overtime. The main instructions  
19 were to bring in the element of performance and  
20 contribution.

21 Q Are you aware of any salaried  
22 employee's bonus that was reduced in any way for 2002  
23 bonus that reflected on the 2001 year -- are you aware  
24 of any salaried employee who ultimately was told you  
25 worked lots of overtime this year, during this year,

1 therefore, we're reducing your bonus?

2 A I know people had bonuses that were  
3 less than the averages in those payouts. I know people  
4 that received zero payout. I don't know what the  
5 message would have been. Indirectly I can -- I would  
6 hope that there was never a message given that you  
7 worked too much overtime, so therefore, you didn't get  
8 a bonus.

9 Q Just to stay on it for a second, the  
10 message shouldn't have been given, but it was certainly  
11 permissible for a manager -- in considering the  
12 performance and considering the total compensation the  
13 employee received, it was permissible for the manager  
14 to say this person's compensation was really high  
15 because of overtime. Because his compensation was at  
16 such a high level, I'm going to reduce his AIP bonus.  
17 That would have been permissible?

18 A You said two things there. Was that a  
19 factor to consider in the distribution award? Yes. Is  
20 it permissible to go, you know, put that in front of  
21 the employee and communicate, well, I had to reduce  
22 your -- your payout because you made too much money?  
23 That is not permissible.

24 Q Okay. It was okay for them to consider  
25 it; you just didn't want them to tell the employee

1 that?

2 A It was a factor in the consideration,  
3 yes. I wouldn't think that would be the correct way to  
4 communicate it.

5 MR. SIMON: Off the record for just a  
6 second. Let me just sort through some  
7 documents.

8 (OFF THE RECORD)

9 MR. SIMON: Back on the record.

10 BY MR. SIMON:

11 Q Mr. Newark, have you ever seen this  
12 document before, Exhibit 19?

13 A I don't believe so.

14 Q I'll just represent to you it's called  
15 an answer that was filed in Federal court in this case  
16 by ZF Batavia. It doesn't mean anything to you because  
17 most of this is referring to the complaint we filed and  
18 that's not in front of you, but I had a question for  
19 you about page five. You see the paragraphs are  
20 numbered. Do you see paragraph 35 at the top?

21 A Yes.

22 Q Let me just read the sentence to you.  
23 "With respect to the allegations in Paragraph 35 of the  
24 Third Amended Complaint, ZFB admits that it is in the  
25 process of changing policies and procedures with

1 respect to its salaried employees."

2 And I'll represent to you that this  
3 complaint, I think, was filed -- do you know when it  
4 was filed?

5 A No, I don't.

6 Q I think that this answer was filed  
7 earlier this year for the third amended complaint.

8 MR. HUNTER: I thought it was actually  
9 filed last year, but I don't recall.

10 MR. COOK: It followed the denial of  
11 the motion to dismiss.

12 MR. SIMON: And also adding other  
13 employees.

14 BY MR. SIMON:

15 Q But putting aside the conversation the  
16 lawyers are having here, Mr. Newark, it looks like the  
17 statement that ZFB is in the process of changing  
18 policies and procedures with respect to salaried  
19 employees, that statement was made essentially around  
20 March of this year. Is that a true statement?

21 A I said earlier that I saw it as more  
22 clarifying and so forth, but, I mean, if somebody wants  
23 to characterize it as changing, I -- I couldn't tell  
24 you. I mean, going from five days to three days, do  
25 you characterize that as a change in policy?

1 Q Do you?

2 A Yes. But that's the only one that I  
3 can remember.

4 Q Are you aware of any other policies  
5 that are what you call being clarified?

6 A No. That's what I'm saying. I think  
7 over the period of several years, yeah, I think we've  
8 tried to do a lot with several, you know, policies,  
9 simply to have policies.

10 Q Well, it says that ZF is in the process  
11 of changing the policies and procedures. I'm just  
12 asking: If you interpret that to mean that there might  
13 be policies and procedures you're clarifying, are you  
14 aware of any others that we haven't discussed so far?

15 A No, I'm not specifically aware of any.  
16 I mean, I think, I guess I would read this to -- as,  
17 you know, a policy is evolutionary or there's always an  
18 ongoing level of activity on policies.

19 Q And Plaintiffs' Exhibit 2, try to keep  
20 that at your elbow because we'll probably continue to  
21 refer to that one.

22 A Okay.

23 Q But just so I understand, you're saying  
24 that obviously there's an ongoing process where you're  
25 changing and clarifying personnel policies.

1                   A           Yes.

2                   Q           As it pertains to the Ford transitional  
3                   employees, it's your opinion that any changes in the  
4                   policy ought to be done with some consideration for  
5                   what is set forth in the summary brochure which is  
6                   Exhibit 2?

7                   A           Right. My -- my opinion is that as  
8                   policies evolve, and I strongly believe they need to  
9                   change, they need to evolve for current circumstances,  
10                   but the base at which you're working from needs to be  
11                   considered, whether that's, you know, these sort of  
12                   documents or -- or others.

13                   Q           All right. We called that last one 19.

14                   MR. HUNTER: Are we done with 19?

15                   MR. SIMON: Yes. This is Exhibit 20.

16                   BY MR. SIMON:

17                   Q           Take as long as you need to review  
18                   these documents, Mr. Newark. I think this one has your  
19                   name on it, so you may have seen it before. I'll  
20                   represent that Exhibit 20 is a printout of an e-mail.

21                   MR. HUNTER: I don't see a Bates stamp  
22                   on there.

23                   MR. SIMON: Oh, there isn't. We have  
24                   produced it with a Bates stamp. It just so  
25                   happens the document I grabbed for the

1 deposition doesn't have one. But that's a  
2 document that's Bates stamped P-something.

3 BY MR. SIMON:

4 Q Just for clarification for the record  
5 because there is no Bates stamp, it says Jim  
6 Whittenbarger at the top and it's an e-mail that's from  
7 Dick Newark, sent Monday, March 11, 2002 to a number of  
8 people, including Chuck Hugan. Do you recognize this  
9 e-mail, Mr. Newark?

10 A Yes.

11 Q And you did indeed send it to the  
12 people on the list there?

13 A Yes.

14 Q What was your purpose for sending this  
15 e-mail?

16 A This was a group of management role  
17 employees, the MR designation, and it was an attempt to  
18 be clearer on specifically by individuals what  
19 exemptions or exceptions that we were working under.

20 Q Was this the -- it says March 11, 2002.  
21 Was this the same time period where certain departments  
22 were being told that you're going to work overtime and  
23 not be paid?

24 A This should have preceded that.

25 Q Well, see that last sentence before the

1 list of names? It says "With the AIP and general  
2 salaried OT budgets, this is a volatile issue and we  
3 must show that the leadership team is doing our share  
4 personally too." I read that correctly?

5 A Yes.

6 Q What did you mean by that?

7 A Just what it says.

8 Q Well, was it a volatile issue -- why  
9 was it a volatile issue? What was a volatile issue?

10 A The establishment of the overtime pay,  
11 particularly for the MR levels. You can see right here  
12 -- every one of these people was a management role  
13 employee and you can see right here, you know, what is  
14 it, seven exceptions.

15 Q All right. Like Dennis Baker, are you  
16 indicating -- do you see Dennis Baker's name?

17 A Right.

18 Q Are you indicating through this e-mail  
19 that he would continue to be paid overtime for daily  
20 and weekend overtime work?

21 A Right. We were a group leader short in  
22 his area, so he was functioning as a group leader.

23 Q Milt Gross, do you see that, where it  
24 says no overtime?

25 A Yes.

1 Q Now, was this a new policy with respect  
2 to Milt Gross and everyone else there who it says no  
3 overtime or was this a continuation of an existing  
4 policy?

5 A This -- this was a continuation. And,  
6 again, this is -- I would put it into the category of  
7 trying to be clear about, you know, consistent  
8 management practices, particularly regarding this group  
9 of management role people.

10 Q It says "Chuck asked this morning which  
11 MR's were still getting OT pay and why." Do you see  
12 that at the top?

13 A Yes.

14 Q That's Chuck Hugan?

15 A Yes.

16 Q What's his role?

17 A Currently he's an afternoon shift  
18 supervisor. At the time he was a business manager on  
19 the E side.

20 Q Which is that, a promotion or demotion,  
21 one way or the other there?

22 A No.

23 Q It's a lateral move?

24 A Yes.

25 Q When did Mr. Hugan start at the plant?

1                   A           November -- this is a memory test.

2                   November of 2001.

3                   Q           Had you known him previously before he  
4                   started at the plant?

5                   A           No.

6                   Q           All right. So apparently through his  
7                   e-mail he was letting you know that certain managers,  
8                   MR's, are being paid overtime and this was your attempt  
9                   to see that there was some uniformity to the policy?

10                  A           Well, it was -- we knew we were paying  
11                  them overtime. And it wasn't -- it was an attempt to  
12                  be clear with everybody on -- you know, so that folks  
13                  understood that there was an expectation that there was  
14                  an ending date to it.

15                  Q           Okay. I got you. So somebody had  
16                  known that, hey, Dennis Baker is still being paid  
17                  overtime and this was supposed to explain that he's  
18                  being paid overtime because he's filling in for a group  
19                  leader?

20                  A           Yes.

21                  Q           Does Dennis Baker get paid overtime for  
22                  his current position?

23                  A           Only on exception. If he fills in for  
24                  a group leader today, yes.

25                  Q           Now, did Dennis Baker recently move to

1 a new position?

2 A Yes.

3 Q What's his new position called?

4 A It's the production manager on  
5 afternoon shift.

6 Q And what was he before that?

7 A He was a lean processing manager.

8 Q As an LPN --

9 A Right.

10 Q -- did he receive overtime?

11 A Generally, no.

12 Q Has anyone ever explained to you --  
13 looking at Exhibit 2 which I told you we'd keep coming  
14 back to, where it says that authorized overtime will be  
15 paid, has anyone ever explained to you why an LPN is  
16 not paid overtime?

17 A Well, I don't know as I would say  
18 they've explained to me. It's a management role  
19 position.

20 Q So it's your understanding the policy  
21 at ZF Batavia is that management level don't get paid  
22 overtime --

23 A Right.

24 Q -- except on exception they do?

25 A Right.

1                   Q           I'll hand you a set of documents that  
2                   we'll mark as Exhibit 21. Have you ever seen this set  
3                   of documents before that starts with, I'll state for  
4                   the record, Bates stamp P616 through 627? I'm not  
5                   going to ask you about every page, sir. I just wanted  
6                   to know if you've seen this before.

7                   A           I believe I've seen this, yes.

8                   Q           Okay. If you look on what's page 626,  
9                   which is the second-to-last page, that's where we see  
10                  that page we had looked at earlier --

11                  A           Right.

12                  Q           -- with the percentages.

13                  A           It looks to be the same document,  
14                  right.

15                  Q           So stepping back for a second, it says  
16                  at the top, the cover page, Merit Planning and AIP, ZF  
17                  Batavia, February 2001. Are these the set of documents  
18                  that you would have been given in your role as plant  
19                  manager?

20                  A           Yes.

21                  Q           And who would have given you this  
22                  document? Or who prepared it, to your knowledge?

23                  A           Human resources.

24                  Q           So in 2001, for doing the AIP bonus in  
25                  2001, the managers apparently were supposed to follow

1 the different percentages that we see on page 626?

2 A Mm-hmm.

3 Q Okay. Turning back to 625, which is  
4 one page before that, it says Annual Incentive Program  
5 at the top. Do you see that, where it says "Pro-ration  
6 for service less than one year"?

7 A Yes.

8 Q It references ZF expatriates, right?

9 A Mm-hmm.

10 Q They have a separate arrangement in  
11 terms of their compensation and benefits?

12 A Yes.

13 Q How is theirs different than everyone  
14 else's?

15 A Actually I don't know. I mean, I know  
16 they have individual contracts. That's as far as I  
17 know.

18 Q Each person has an individual contract?

19 A I believe so.

20 Q Do you know if overtime is paid?

21 A No, I don't.

22 Q That last sentence says "All eligible  
23 employees will receive the AIP Award determined by the  
24 formula -- no adjustments for individual performance."

25 A Right.

1 Q So that's how you understood the AIP  
2 award to be handed out?

3 A In that year.

4 Q All right. But not in subsequent  
5 years?

6 A Right.

7 Q Who made that change?

8 A The change to --

9 Q To consider performance.

10 A I think it was the transmission  
11 management team.

12 Q Who is that?

13 A It's the -- at the time it would have  
14 been Dave Adams' staff.

15 Q And who's on Dave Adams' staff?

16 A Director of human resources, the  
17 financial, Karl Kehr, Mark Bugajski, controllers, Kurt  
18 Gogolin in purchasing, and it's about 12 people, I  
19 think, in total.

20 Q What was that man's name in purchasing?

21 A Kurt Gogolin.

22 Q Kurt Gogolin?

23 A Yes.

24 Q How do you spell Gogolin?

25 A G-O-G-O-L-I-N.

1 Q Okay. How do you spell his first name?  
2 A Kurt, K-U-R-T.  
3 Q All right. You can put that document  
4 away. This is Exhibit 22, and, again, the question  
5 just is -- let me explain. Exhibit 22 is excerpted  
6 pages from a larger set of documents.

7 A Okay.

8 Q Do you recognize -- I mean, the cover  
9 page, can you explain what that -- even though I  
10 haven't included all the documents, what ultimately  
11 those documents refer to, who prepares them?

12 A Give me a minute.

13 Q Sure.

14 A This would appear to be part of, if you  
15 look at the 11/00, what we call a work plan. It's the  
16 annual operating plan.

17 Q Who prepares this set of documents, a  
18 number of people?

19 A Yes. And it's ultimately rolled up --  
20 you see Karl's signature. It's ultimately rolled up by  
21 the financial organization.

22 Q And Mr. Kehr's date -- you see October  
23 17, 2000 on the top page?

24 A Yes.

25 Q Would that have -- this set of

1       documents -- I know you don't have all the documents,  
2       but this set of documents would have been distributed  
3       to you in the fall of 2000?

4           A        Actually I don't know if it was  
5       distributed.

6           Q        I mean, have you ever seen these  
7       documents before?

8           A        Not this particular one.

9           Q        Well, let me just turn to one of the  
10       pages here and just ask if you can help explain. Bates  
11       stamp 90, it says "Comments by partial plans."

12                  MR. HUNTER: Dick says on the comments,  
13       the C is cut off.

14                  MR. SIMON: Yes, the C is cut off.

15                  THE WITNESS: I've got a 900. Is that  
16       the page you're looking at?

17                  MR. SIMON: Yes.

18                  THE WITNESS: Okay.

19       BY MR. SIMON:

20           Q        Have you ever seen these comments,  
21       perhaps in a different form, about these different  
22       transmissions?

23           A        Sure. I mean, as an example, I  
24       probably gave, you know, some of the potential sourcing  
25       on convertors, differentials, clutches. That's

1       probably a comment that comes from some of the work I  
2       was doing.

3                   Q        My question to you is, for this  
4       document -- I might show you some more -- based on what  
5       you have there in front of you, the comments, can you  
6       help explain where the plant was in terms of its plans  
7       for CVT as well as where it was on the CD4E at this  
8       time in October of 2000?

9                   A        Sure. The first sentence is a pretty  
10      important one actually. The CD4E volume through 2004  
11      model year was basically the exit plan for CD4E. 2004  
12      model year would be roughly starting July of 2003 and  
13      ending in July of 2005. So that was -- at the time  
14      that was the plan.

15                  Q        Okay. So you had planned in 2000 to  
16      have the CD4E go through July 2003 or a later date?

17                  A        July -- 2004 model year, so -- it's  
18      evolved several times since then but -- which would be  
19      roughly introduced in the one -- one -- you know, two  
20      quarters, say, ahead of time, so -- and it would  
21      balance out roughly one year later.

22                  Q        Are we ultimately talking about that  
23      you saw the CD4E tailing off in the period? Is that  
24      what we're talking about?

25                  A        Not tailing off. Exiting. It would be

1 a pretty hard stop actually.

2 Q And I apologize for being dense. It  
3 might be clear in the transcript, but --

4 A No.

5 Q -- it would end in 2004 or 2005?

6 A It would end --

7 Q We'll call it the annual year.

8 A The calendar year would be July of  
9 2005.

10 Q Okay.

11 A Excuse me. Excuse me. It would be  
12 July of 2004. And then July of 2005 we would introduce  
13 the new model. Excuse me. 2004 we would introduce.

14 Q All right. This relationship between  
15 the CD4E and then these others, CFT23, CFT30, are they  
16 --

17 A The CFT23 and 30 are two CVT models.  
18 They're distinct, different products. And we have a  
19 shared floor space in the whole plant that has to  
20 accommodate at this time some pretty interesting  
21 challenges on what we call the turnaround. So we had  
22 to skinny up the CD4E operations in order to have  
23 enough space to prepare and install the CFT.

24 Q Now, the CD4E was the transmission that  
25 was being produced when the plant was owned and

1                   operated by Ford, correct?

2                   A           Yes.

3                   Q           And the CVT was the new transmission  
4                   that is what you're shooting towards now, right?

5                   A           Yes.

6                   Q           And the CFT23 and CFT30 are a type of  
7                   CVT transmissions?

8                   A           Yes. It's the torque output or torque  
9                   capacity designation.

10                  Q           And I think I understand -- was there  
11                  some bad news about one of these CFTs recently, about  
12                  whether it's going to go forward or not?

13                  A           No.

14                  MR. VANWAY: Steve, I hate to interrupt  
15                  you while you're on this topic, but I'm  
16                  expecting my call any minute. Can we go ahead  
17                  and break?

18                  MR. SIMON: We can go on break now.

19                  That's fine. I forgot.

20                  (RECESS)

21                  MR. SIMON: We're back on the record.  
22                  And you understand that you're still under  
23                  oath, Mr. Newark?

24                  THE WITNESS: Yes.

25                  BY MR. SIMON:

1 Q We were looking at what we've marked as  
2 Deposition Exhibit 22. We were on Bates stamp 900  
3 where it has a section called comments.

4 A Yes.

5 Q And we were talking about the CD4E.  
6 And we were specifically talking about CFT23 and CFT30.  
7 Did those launches in 2002 and 2003 respectively occur?

8 A They have been -- those launches --  
9 we're currently launching the 23 this year.

10 Q It's behind schedule a year?

11 A Yes.

12 Q What about the CFT30?

13 A And the 30 will launch early next year.

14 Q Now, there's a line of the CFTs that  
15 apparently is going to be discontinued or just isn't  
16 going to happen?

17 A It's being delayed. There's a Ford  
18 model that was designed after these two, referred to as  
19 the CFT26, and we've just recently announced that that  
20 will be delayed a minimum of two years.

21 Q Which would mean what year is it going  
22 to be?

23 A 2007 would be the -- the earliest.

24 Q And what's that a result of?

25 A I think a few factors. One is that

1       we've had some design -- late design changes and some  
2       application changes, given the Ford cycle plans and  
3       platforms. Possibly a recognition that we have a lot  
4       going on. I mean, the other side of this story is that  
5       we're basically doubling the output of the plant in the  
6       next year and so there's a recognition that we've  
7       bitten off an awful lot, have a lot in front of us.

8                   Q        You're doubling the output of any  
9        specific model?

10                  A        Well, the combination -- the total  
11        output of the plant will roughly double next year, so  
12        the CD4E business plus the new CVT business and --

13                  Q        Is the -- I'm sorry.

14                  A        If you take the 18 months from now,  
15        we'll roughly double the output of the plant on a  
16        volume basis.

17                  Q        Well, that's good news, right?

18                  A        It's great news.

19                  Q        Okay. The CD4E represents what  
20        percentage of the total volume that the plant produces?

21                  A        Today?

22                  Q        Yes.

23                  A        A hundred percent.

24                  Q        You're talking about doubling the  
25        output. Are we talking about doubling the CD4E

1 exclusively?

2 A No. The -- when you add the CVT --

3 Q To the CD4E?

4 A Right. The CD4E is pretty well  
5 constant, call it 350,000 units a year. And we will  
6 add roughly 300,000 units of CVT by the end of next  
7 year. That's what I'm referring to as doubling.

8 Q I see. All right. When you say the  
9 CVT, are you referring to the CFT23?

10 A 23 and 30.

11 Q Okay. I've got you.

12 A So if you look at these volume figures  
13 here, yes, there's a very different ramp that -- the  
14 current plan is a very positive story.

15 Q All right. You can put that one aside  
16 and let's hopefully expeditiously look at the following  
17 year. This is 23. And, again, these are excerpted  
18 pages of the business plan.

19 A Right.

20 Q Actually is this an entirely different  
21 document? I think the other document you referred to  
22 as an annual operating plan and this says business  
23 plan. Is that --

24 A The Germans call it a WP. If you look  
25 at the date, the 11/01 is actually November of '01. It

1       typically is prepared in, say, the early third -- or  
2       late third, early fourth quarter, so you can see the  
3       date of October here. It is the business plan.

4                   Q       So essentially is it the same --

5                   A       Yes.

6                   Q       -- document as the 2000, just --

7                   A       Yes.

8                   Q       And, again, for the record, this is not  
9       the entire set of documents. I just chose certain  
10      ones. Well, just kind of generally, with a broad  
11      brush, Mr. Newark, I think it's going to start with  
12      Bates stamp 857 where it says major accomplishments --

13                 A       Okay.

14                 Q       Starting where we were with what the  
15      plans were in 2000, how have things changed, been  
16      modified in regards to the CVT and the CD4E, if at all?

17                 A       In this time frame?

18                 Q       Yes, starting in 2001.

19                 A       Well, I think, you know, you can lay  
20      them side by side and do the comparison, but the  
21      volumes are different. There's still two models. And  
22      the accomplishment was -- this doesn't have timing, at  
23      least not on this page, but the timing would have also  
24      been different.

25                 Q       Well, we had talked about the CD4E

1       volume going through the fiscal year -- or the model  
2       year 2004.

3                   A        Right.

4                   Q        Had that plan changed by the time we  
5       get to 2001, according to this business plan?

6                   A        I don't think so. It was after that,  
7       as I recall.

8                   Q        What about in terms of the CVT launch?  
9       Had that changed at all?

10                  A        The -- that's what I was saying. If  
11       you line up the volume comparison, there's roughly half  
12       a million in volume, 400,000 units of volume,  
13       difference between these two.

14                  If you read point number one, the  
15       agreement was around 588,000. If you refer to the  
16       Exhibit 22 assumption, it was about a million units.

17                  Q        Which direction are you going, up or  
18       down, then?

19                  A        Going down.

20                  Q        And what was the reason for that?

21                  A        Primarily Ford cycle plans. I mean,  
22       this is a lot of volatility in terms of, you know,  
23       which applications are good fits, what products Ford is  
24       really going to develop and deliver, you know, where  
25       does it -- where does it package well, where doesn't it

1 package well.

2 Q Okay. Where it says "Planning  
3 Results," let's see, where it says "The CVT delay," do  
4 you see that?

5 A Mm-hmm.

6 Q Can you explain that sentence? "The  
7 CVT delay in Job #1 resulted in a favorable profit  
8 impact." What does that mean?

9 A Well, the Job #1 would be the first  
10 transmission, saleable transmission. And the delay,  
11 again, I can't piece together exactly the time line  
12 between the two documents, but we announced someplace  
13 in here roughly an 18-month delay. And the reason that  
14 -- you might say, well, geez, you know, why is that  
15 good news, a favorable profit? But the early years of  
16 the CVT are what I call wickedly expensive and so  
17 there's a pretty heavy investment and pay-down period.

18 Q It's not going to be profitable in the  
19 first few years?

20 A Right. So that's why this statement.

21 Q Okay. I think we can move to the next  
22 business plan. This one is Exhibit 24. You see this  
23 one is dated November '02 --

24 A Right.

25 Q -- although it says 2003 update. And

1       then there's a few pages that are excerpted from this  
2       larger set of documents.

3               A        And, again, not to be -- the timing of  
4       this handwritten comment, 2003 update, do we know --

5               Q        No. Business plans, after they're  
6       created at the end of a calendar year, are they updated  
7       in the following year?

8               A        Yes. And -- and maybe others have told  
9       you, but starting roughly in this time period the  
10      business plans were extremely volatile, I mean to the  
11      point of having, I don't know, a dozen versions in a  
12      calendar year.

13              Q        Okay.

14              A        So that's only a caution in terms of  
15      the documents and dates and so forth.

16              Q        Let's look at the page that says  
17      "Comment" at the top, which is 767. I think you've got  
18      it.

19              A        Yes.

20              Q        I'm not trying to -- I know you don't  
21      have all the documents lined up, but just looking at  
22      the comment section, can you describe just generally  
23      how things changed from 2001 in terms of the CVT and  
24      the CD4E?

25              A        Right. You can see the first

1 designation of the CFT26. Okay? And the CFT26 was  
2 envisioned as the -- perhaps the third-generation  
3 product. It would eventually obsolete the 23 and the  
4 30. It would become a single high-volume, cost-  
5 effective design. And that's consistent -- the comment  
6 "consistent with original business plan vision" is  
7 directed at that.

8 So if you can picture the story of a  
9 couple of early models, 23, 30, that are well on their  
10 way to being launched, a new model being introduced  
11 that will eventually obsolete the two. And you can see  
12 this ICR on point number two is the integrated cost  
13 reduction. And it was a design specifically designed  
14 for target cost.

15 Q Were there any changes during this time  
16 period in 2002 regarding the CD4E and how long you  
17 expected it to run until its end?

18 A At some point in this planning process  
19 it was extended. I don't see a document right here,  
20 but roughly in late 2002 Ford announced that they  
21 intended to extend the CD4E until the year 2010. But I  
22 don't see it referenced in this version.

23 Q Is there any connection between the  
24 CD4E being extended out and the delay in the CVT  
25 launch?

1                   A           Yes. It specifically goes to the  
2                   CFT26. The application that the CD4E is most dominant  
3                   in is the Ford Escape vehicle and that was envisioned  
4                   in roughly the 2005 time period to move to a CFT30 or a  
5                   cost-reduced version of that which later became known  
6                   as the CFT26.

7                   Q           And Ford is ZF Batavia's single  
8                   customer, right?

9                   A           Ford and their affiliates, yes.

10                  Q           In terms of the decision-making at the  
11                  plant, for significant decision-making that you might  
12                  make or recommend, is it always a situation where you  
13                  have to run it by Ford to make sure that they approve?

14                  A           No, not really. I mean, it depends.  
15                  You know, Ford in this case is a customer, so the  
16                  appropriate customer application kinds of decisions.  
17                  But Ford is really in the driver's seat regarding their  
18                  application intent, so the customer is telling us this  
19                  is what they want us to do versus us running decisions  
20                  by them, if I understand your question.

21                  Q           Ford ultimately dictates how many  
22                  transmissions you're going to make?

23                  A           Absolutely.

24                  Q           Is there any particular policy that you  
25                  wanted to -- procedure, practice that you wanted to

1       institute at the plant that it was run by Ford and shot  
2       down and so you reversed course?

3                   A        I 'm not sure I understand the question.

4                   Q        Is there anything you wanted to do at  
5       the plant -- I 'm not talking about with respect to a  
6       certain individual but just broadly regarding how you  
7       make the transmissions or how you handle the salaried  
8       workforce or hourly workforce where Ford intervened and  
9       said, no, we 're going to do it this way?

10                  A        Ford has a number of -- I would say  
11       more on the hourly side than anything, given the  
12       current seconded employees, so Ford has a number of  
13       interests that they express on those kinds of topics,  
14       you know, regarding how we manage the hourly workforce.

15                  As an example, we wanted to put time  
16       clocks in and Ford doesn 't think that 's a particularly  
17       good idea, given that none of the Ford plants in North  
18       America have time clocks. So, you know, they don 't  
19       support certain things.

20                  Q        Are there occasions where you 've had  
21       some policies regarding the salaried workforce where  
22       Ford has intervened?

23                  A        The only occasions that I know of is we  
24       have some current Ford employees, not transition  
25       employees, that Ford has imposed some overtime

1       restrictions on and they want to make sure we're  
2       adhering to those. And they've also had some -- you  
3       know, imposed some direction on what types of job  
4       assignments, wanting to make sure that ultimately it's  
5       a priority to have them assigned at Batavia doing  
6       something versus assigned, say, at Sharonville or  
7       another Ford plant. But they have -- you know, there's  
8       a half a dozen of those employees.

9                   Q        Okay. I think we're done with those.  
10          Actually look at Exhibit 23, which is business plan  
11          2001. If you look at Bates stamp 857, at the very  
12          bottom it says "The second factor is the restructuring  
13          employees..." do you see that?

14                  A        I'm sorry. The second from the bottom?  
15                  Q        Where it says "The second factor is the  
16          restructuring employees who were added..." and then it  
17          continues on the next page.

18                  A        Yes. Okay.

19                  Q        I'll give you a second to look at that  
20          sentence and that paragraph. What's that referring to,  
21          the restructuring employees?

22                  A        We had a -- you can reflect some of the  
23          other comments on the CD4E, but we had a turnaround  
24          plan -- you can see point number two up above on the  
25          accomplishments, but it was a restructuring of the

1       business into a leaner and more of a lean manufacturing  
2       system than a mass production system and so we had  
3       various resources that made their way into the budgets  
4       and were available to us: consultants, purchase  
5       services, a few actual hired positions. The lean  
6       processing manager positions would be an example of  
7       that.

8                   Q        Well, the restructuring refers to --  
9        were you downsizing?

10                  A        No. It was really the CD4E business is  
11        longstanding a very unproductive business and part of  
12        it's by the design of the process, is it was processed  
13        in the early '90s and a lot of it relates to work  
14        practices and work ethics and so forth. So this effort  
15        was to reconfigure some lines, break some bottlenecks,  
16        bring some new machines in, throw some old machines  
17        out, those kinds of activities in order to improve the  
18        productivity.

19                  Q        All right. You can put those aside,  
20        put those in front of you, Mr. Newark. Have you seen  
21        Deposition Exhibit 16 before?

22                  A        Yes, I've seen this.

23                  Q        Do you know, what was the motivation  
24        behind this policy?

25                  A        Well, we had -- as the letter

1       indicates, we had been designated a foreign trade zone,  
2       which has a number of restrictions and regulations in  
3       terms of how to manage the, I guess, ingress and egress  
4       into that trade zone, and so this was our work to  
5       ensure that we had compliance with the foreign trade  
6       zone requirements.

7                   Q        And so per this notice I understand  
8       that salaried employees were required to, using an  
9       electronic card system, swipe in and swipe out when  
10      they were entering and exiting the plant.

11                  A        Right.

12                  Q        But I understand the hourly employees  
13      did not have to swipe the card when they were exiting  
14      the plant.

15                  A        That's correct.

16                  Q        All right. So is it fair to say that  
17      the swiping of the card when one is exiting the plant,  
18      that that was not, as far as you know, a practice that  
19      the foreign trade zone rules required?

20                  A        No. The foreign -- the foreign trade  
21      zone wants to know the -- like I said, the entry and  
22      the exit out of the foreign trade zone and I believe  
23      the way that we ended up working around the whole  
24      situation with the hourly is the hourly -- all hourly  
25      employees are entering and exiting every day in the

1 trade zone. The salaried employees have the option, by  
2 the nature of where their work is, that they may enter  
3 or they may not enter that zone, and so that's one of  
4 the small technical designations that was made.

5 So if you're an hourly employee, we've  
6 recorded that you are working in the foreign trade zone  
7 and then the timekeeping system, which is not a badge  
8 swipe, is the evidence that you were in that zone on  
9 this particular day and you did leave on that  
10 particular day. It's -- it's not the badge swipe  
11 designation.

12 Q So how are the salaried employees in a  
13 different situation?

14 A Strictly that they have --

15 MR. HUNTER: Objection. Asked,

16 answered already. But go ahead and answer.

17 THE WITNESS: The salaried employees --  
18 primarily the building is constructed -- the  
19 foreign trade zone is the factory operations.  
20 It's not the office admin area. And so the  
21 salaried employees have occasion to go into  
22 that, whereas the hourly employees are  
23 relegated, I guess would be the word, to that.

24 BY MR. SIMON:

25 Q Although some of the salaried might

1 spend their whole day in the factory operations?

2 A Yes. Oh, yes.

3 Q But they're required to use a swipe  
4 card when they're going in and out of the plant  
5 regardless?

6 A Right.

7 Q Was one of the motivations for this  
8 policy -- and the date there is August 29th, 2001 -- is  
9 that management wanted to keep track of, for their own  
10 reasons, whether salaried employees were in the  
11 building when they said they were?

12 A The -- the other thing that was  
13 occurring about the same time was an interest, as I  
14 mentioned earlier, to install time clocks for the  
15 hourly, and it's a pretty tough argument of why you  
16 want to have time clocks for hourly if you don't also  
17 have some disciplines with your salaried workforce. So  
18 we were hoping to fundamentally -- I took my badge off  
19 as I came in, but we really wanted to have the  
20 compliance with the badge requirement to designate that  
21 we know who each other personally is -- it's a photo ID  
22 badge -- along with where we are in the building. And  
23 it was more -- well, as I said, primarily directed at  
24 who is in the foreign trade zone and can we demonstrate  
25 reasonable controls over that.

1                   Q            But were there reasons beyond the  
2                   foreign trade zone that management wanted to keep track  
3                   of where the salaried employees were anyhow?

4                   A            No, not really. I mean, it was a -- it  
5                   was an incident related to the requirement. The trade  
6                   zone -- and, again, I'm not sure. I assume you're  
7                   fairly familiar with these, but it's an area that has  
8                   management responsibilities much like a customs area at  
9                   the airport and so if you think about the security  
10                  required of who is in and out of a customs area, that's  
11                  sort of the responsibility that we bear.

12                  Q            Do you see -- let me just direct you to  
13                  one of the paragraphs. Do you see the paragraph where  
14                  it says "Please be advised that salaried time sheets  
15                  will be audited"? Do you see that?

16                  A            Mm-hmm.

17                  Q            And then you see the next sentence  
18                  where it says "Your manager will be asked to clarify  
19                  notable differences between them and pay adjustments  
20                  are a possibility if no justification is forthcoming."  
21                  So it was your understanding with salaried employees  
22                  that if the time cards don't line up with the system  
23                  readouts, that their pay may be docked?

24                  A            And that was sort of the threat to get  
25                  people to be compliant with the -- the card swipe.

1                   Q           So it was your understanding that if a  
2                   salaried employee on, let's say, a Monday puts on his  
3                   time sheet that he reported to work at 7:00 a.m. and  
4                   worked eight hours, but, in fact, the electronic card  
5                   readout shows that he didn't get to work till 8:00  
6                   a.m., he would lose an hour of pay is what your  
7                   understanding was?

8                   A           Yeah. And like I say, what the -- the  
9                   intent behind what we were trying to do was to incent  
10                   people to be very disciplined on using their badge  
11                   swipes for security purposes. And so the threat was,  
12                   well, you don't do that right and we're going to --  
13                   we're going to take your pay away and assume that, you  
14                   know, you didn't clock in the door or didn't activate  
15                   the door correctly.

16                   Q           So in the example I gave they would  
17                   have lost an hour of pay?

18                   A           It could have happened, yes.

19                   Q           But you were hoping to make it a  
20                   deterrent?

21                   A           Right, right.

22                   Q           So it may have happened to a few  
23                   people, but you had hoped it would a deterrent, right?

24                   A           Right. I don't think it happened to  
25                   anybody.

1 Q Well, do you know for a fact?  
2 A I don't know for a fact.  
3 Q Okay. Exhibit 10. Let's see if I can  
4 dig it out here. I'll just show it to you. I think  
5 I've got those two memorized. I'm the one who  
6 misplaced my copy. Just take a second to look at  
7 Exhibit 10 and I'm just going to ask you if you've seen  
8 it before, that sort of thing.

9 A Mm-hmm. Yes, I've seen this.  
10 Q What's the date there on the top, sir?  
11 A March 28th, 2002.  
12 Q And this was a notification of the  
13 overtime policy that Len Sennish distributed to  
14 salaried employees apparently?

15 A It was a notification -- this letter, I  
16 think, was distributed to all salaried employees, yes.

17 Q And was that a change in policy as far  
18 as you knew?

19 A Again, I don't -- I wouldn't  
20 characterize it as a change in policy.

21 Q From what you read there, do you  
22 understand that the policy regarding casual time is  
23 that you are essentially required to do a total of one  
24 hour of casual time each day as a salaried. And only  
25 if you work a total of two additional hours, for

1 example, ten hours in a given eight-hour day, once you  
2 get ten hours, you'll be paid for one hour?

3 A Right. I think I said that earlier,  
4 yes.

5 Q Okay. And that's -- what you've  
6 described earlier is reflected in that notice by Mr.  
7 Sennish?

8 A It doesn't mention any of the ten hour  
9 kind of stuff. It basically talks about the nine hour  
10 normal, sort of the expectation.

11 Q But you think it flows from that that  
12 you've got to work ten hours in an eight-hour day to  
13 get paid the one hour overtime?

14 A Right.

15 Q Okay. You can put that one aside, sir.  
16 Are you aware of any -- when I say Ford transitional  
17 employees, you know who I'm talking about, right?

18 A Yes.

19 Q Are you aware of any Ford transitional  
20 employees that after 1999 were allowed to go back to  
21 Ford as a Ford employee?

22 A No, I don't recall any. You'll  
23 probably tell me there were, but I don't recall any.

24 Q Well, I'll just perhaps refresh your  
25 recollection.

1                   A           There you go.

2                   Q           This is Exhibit 25. Take just a moment  
3                   to review that. I'm not going to ask you great detail,  
4                   Mr. Newark. Just for the record, 25 is an e-mail at  
5                   the top that's from Julie Hallauer addressed to Stan  
6                   Meyer, Karl Kehr and Dave Adams on January 10th, 2001.  
7                   Have you seen this e-mail exchange before?

8                   A           I don't think so.

9                   Q           Does this refresh your recollection  
10                  that Julie Hallauer was a Ford transitional employee  
11                  that went back to Ford?

12                  A           No. Actually I'm well aware of Julie  
13                  leaving Batavia and -- but I think you're telling me  
14                  she was -- I believed that she was a Ford employee, not  
15                  a transition. I didn't realize she was ever a ZF  
16                  roster.

17                  Q           Okay. All right.

18                  A           Apparently she was.

19                  Q           She worked with you for a short time?

20                  A           Yes. No, I know Julie.

21                  Q           She was a director of the CVT program?

22                  A           Mm-hmm.

23                  Q           Was she a direct report?

24                  A           She reported to Stan Meyer in the sales  
25                  and planning area.

1                   Q            Okay. And so she worked at the plant  
2                    for a period of time, but you apparently thought that  
3                    she was a Ford employee?

4                   A            Right.

5                   Q            And she ultimately transferred to  
6                    another Ford plant?

7                   A            Right. Actually it's a -- I think it's  
8                    a division office.

9                   Q            Of Ford?

10                  A            Yes.

11                  Q            All right. Done with that one. Before  
12                 I show you this document, I just wanted to make sure I  
13                 understand something. On the AIP bonus -- the record  
14                 reflects whatever year you said, but I think it was in  
15                 2001 going into 2002 that it changed that the AIP  
16                 bonus, the managers were allowed to consider individual  
17                 performance.

18                  A            Yes.

19                  Q            All right. This is 26. And I don't  
20                 think you're on this e-mail exchange either, Mr.  
21                 Newark, but if you just want to take a moment to look  
22                 at it, I just have a question about a couple of lines  
23                 in there. For the record, it's an e-mail exchange that  
24                 at the top is December 18th, 2001, from Len Sennish to  
25                 Herb Huebner and then it also includes an e-mail from

1           Len Sennish to Mark Bugajski.

2           A           Okay.

3           Q           All right. Do you see in the middle of  
4           that document is an e-mail from Mr. Bugajski to Mr.  
5           Sennish on December 17th, 2001 that starts off "Len,  
6           speaking of non-achievement, the President stopped in  
7           today to discuss AIP payments"? Do you see that  
8           paragraph?

9           A           I'm sorry. Say it again. The middle  
10          paragraph?

11          Q           Yes. You see the paragraph I'm talking  
12          about?

13          A           Yes. Okay.

14          Q           Okay. Had Mr. -- and the president  
15          refers to Mr. Adams you assume?

16          A           Yes.

17          Q           Did he ever tell anybody that he wanted  
18          to change the AIP bonus calculation or distribution so  
19          that the people in the operations feel some pain?

20          A           Yes.

21          Q           How did you understand that sentiment?

22          A           It was interesting because I'm the --  
23          the senior manager responsible for operations, so I  
24          obviously took it pretty personally. The paradigm or  
25          the context in which -- the AIP metrics are safety,

1       quality, delivery and cost, and they're all controlled  
2       really exclusively by the performance of the  
3       manufacturing or the operations unit. And so the --  
4       the struggles or the non-attainment of various goals  
5       that have a financial payout either extends or  
6       penalizes every salaried employee in the company so,  
7       you know, you read the not-too-flattering comments on,  
8       you know, manufacturing pukes and so forth.

9                   There was a lot of discussion over, you  
10       know, hey, you guys aren't doing your job and so you're  
11       costing all of us money and so that was kind of the  
12       context. And then it extended to this feeling anyways  
13       of, you know, total compensation and overtime and all  
14       that stuff, so --

15               Q           We had talked before about people  
16       having AIP bonus cut because of working too much  
17       overtime. To be fair, that kind of stemmed from the  
18       top down?

19               A           Well, it was -- I mean, there was  
20       clearly a -- a total compensation view. And, yeah, I  
21       would say that it was -- I wouldn't say it was a top  
22       down directive, but I would say that there was clearly  
23       a consideration and a tone set that, you know, you guys  
24       need to step it up some more.

25               Q           I guess what I'm wondering is you had

1        talked about AIP bonus being adjusted so that  
2        performance is considered. Would it be more accurate  
3        to characterize the change in AIP bonus that Mr. Adams  
4        wanted to make sure some people have a lower AIP bonus  
5        because he thought they were working too much overtime  
6        and costing the company money?

7            A        I think he felt that. I think in the  
8        deployment we didn't -- as I mentioned earlier, we did  
9        not deploy it that way exclusively. We looked at total  
10       compensation, total contribution and performance and  
11       made decisions based on that. So I can assure you it  
12       was not deployed as strictly let's look at this guy's  
13       overtime and figure out what the AIP is.

14            Q        But the whole issue of the overtime  
15        affecting the AIP bonus, that kind of stemmed from Mr.  
16       Adams' sentiment that operations people need to feel  
17       some pain?

18            A        Well, in fairness, I think in that  
19        particular preceding year we missed our salaried  
20       overtime budget by about \$1,200,000. We overran at  
21       about 100 percent of the budget. So in fairness to how  
22       a president would look at an operations unit, I  
23       understand why that would -- would be a pretty strong  
24       statement.

25            Q        Did that affect your bonus?

1                   A            Absolutely.

2                   Q            We had been talking to Mr. Saleh at his  
3                   deposition about AIP bonuses. I just want to see if  
4                   you can help me on the procedure. He had said that as  
5                   a manager at his level, he'd make recommendations for  
6                   what the AIP bonus was.

7                   A            Right.

8                   Q            He also said that he ultimately didn't  
9                   know what bonuses people actually got. And my question  
10                  to you is: Are there people who then review what a  
11                  manager at Mr. Saleh's level recommend and do they make  
12                  modifications? And if so, who are those people?

13                  A            The -- there's two places that that can  
14                  occur. Certain -- if we describe the current practice  
15                  that we have in place now, Hassan would make a  
16                  determination of what within the budget that we give  
17                  him, what the AIP distribution should be by individual,  
18                  and we would typically have a discussion about criteria  
19                  and those things. And then that would eventually roll  
20                  up to my level, where I would look at all of my  
21                  department managers -- excuse me -- that I would look  
22                  at all of the other department managers and, as an  
23                  example, if one area had a particularly strong  
24                  performance and wanted to recommend an award higher  
25                  than what their budget allowed, then obviously some

1 other area has to balance it out.

2 So the first review occurs at my level.

3 And then there's a company-wide review at the TMT and  
4 really the policy committee level. So that's probably  
5 the basis behind Hassan's -- 90 percent, 98 percent  
6 probably are exactly what the manager recommends, but  
7 there are adjustments here and there.

8 Q Would Mr. Saleh's, given his position  
9 in the maintenance department, would you have expected  
10 that his bonus would have been reduced based on the  
11 overtime in his department?

12 A Yes.

13 Q And so ultimately -- you gave a long  
14 explanation, I appreciate, about how the AIP bonus is  
15 reviewed and so forth. Who ultimately made the  
16 decision about your bonus?

17 A I would assume it was my boss and  
18 probably the other members of the policy committee.

19 Q Okay.

20 A Excuse me. And it's also, at my level,  
21 reviewed by the board of directors.

22 Q This is 27. Take as long as you need  
23 to review that, Mr. Newark. My question to you is  
24 just: What are these e-mail exchanges about?

25 A The -- you can tell it was a quick

1 exchange, but it was -- Jeff Busam is an employee that  
2 had actually interviewed and was selected for a lean  
3 processing manager position, and this was an exchange  
4 trying to establish a salary and the equity between  
5 Mark Calhoun, who was an existing lean manager, and Jim  
6 Cannon, who was also a lean manager.

7 Q Are those ZFB new hires or are Mr.  
8 Calhoun and Mr. Busam Ford transitionals?

9 A I've got to be careful. I think -- I  
10 believe they're new hires, but I'm not -- I'm not sure.  
11 They were both here before I was here.

12 Q Well, when a ZFB new hire comes in, I  
13 mean, are they allowed to negotiate individually the  
14 best deal that they can get?

15 A Hope so.

16 Q And I think we talked about this  
17 earlier, but, I mean, some of the ZFB new hires could  
18 come in at a higher level than a Ford transitional for  
19 a relatively comparative position; isn't that true?

20 A I'm not aware -- theoretically it could  
21 be true, yes.

22 Q You're just not aware of any?

23 A Right.

24 Q That's all for 27. You don't have to  
25 take these documents out, but we were talking about the

1 business plans. Are there separate documents that you  
2 call time lines that you prepare?

3 A There is a timing plan maybe that you  
4 -- that would look at the launch of vehicles. Perhaps  
5 that's your reference.

6 Q They're called timing plans?

7 A Mm-hmm.

8 Q And do you prepare one annually?

9 A Again, it's pretty dynamic. There  
10 would be several -- there is not a master time line  
11 that is tied to the WP. There would be several  
12 derivatives. And there's a program timing chart that  
13 would look at, for instance, the manufacturing  
14 installation work. There would be a cycle plan that  
15 would be Ford's intention of purchasing certain amounts  
16 and certain volumes. There would be a timing plan for  
17 the process and product engineering work. So there --  
18 I mean, there's literally thousands of different timing  
19 plans that --

20 Q Are there timing plans that are  
21 prepared in relation to CVT?

22 A That's the bulk of them, are CVT.

23 Q Are there documents that would go into  
24 more detail than the business plans about your time  
25 line for the CVT and what needed to happen by a certain

1 date and what the costs were expected and --

2 A Oh, absolutely. Absolutely.

3 Q And would those documents also reflect  
4 the personnel that you were assigning?

5 A Some of them would get into a portion  
6 of that. Typically it would be -- those documents  
7 would be the numbers of people, the ramp-up of how many  
8 people we need for what time to run production, as an  
9 example, or how many engineers we need.

10 Q Have you ever gone to Ford and quoted  
11 them and said, we can do the CVT for, I guess, like \$12  
12 an hour average for an hourly worker?

13 A No, no, no. We've -- we have a  
14 pricing, you know, type of quote that you might imagine  
15 and we would go to that. And then our business model  
16 would determine sort of our cost allocation. But no.  
17 In fact, you know, again, given our seconded workforce,  
18 Ford really controls the -- the labor rates.

19 Q For the hourlies?

20 A Right.

21 Q On the CVT are they mostly -- you have  
22 a number of ZFB new hire hourlies, right?

23 A Yes.

24 Q Are a disproportionate amount of them  
25 being assigned to the CVT versus the Ford hourly?

1                   A           I don't think disproportionate. I  
2                   don't know the exact statistics, but I would say 30  
3                   percent are Ford and probably 70 percent is ZFB, pretty  
4                   well who bids on the jobs.

5                   MR. SIMON: Just in terms of documents,  
6                   counselors, I might be adding to that list just  
7                   documents regarding the timing plans that Mr.  
8                   Newark has identified.

9                   We had asked for time lines in our  
10                  request and you said I don't know what a time  
11                  line is. And I've got business plans. But we  
12                  may also just ask for a timing plan that  
13                  reflects the workforce that was being assigned.

14                  THE WITNESS: My only advice would be,  
15                  be very specific on what you want because, I  
16                  mean, you'll get a dump truck load if you're  
17                  not careful. So if you want to know -- I think  
18                  I heard you mention by name who's being  
19                  assigned where.

20                  MR. SIMON: Sure.

21                  THE WITNESS: And tie that to a time?

22                  BY MR. SIMON:

23                  Q           That would be reflected on one of the  
24                  timing plans?

25                  A           There's one that I can visualize. It's

1 an engineering map that has all the engineers and the  
2 timing of how they are assigned to CVT, as an example.

3 MR. SIMON: I'll work on clarifying  
4 what we want there. I just wanted to alert you  
5 to it since we were talking about it.

6 BY MR. SIMON:

7 Q Do you think the Ford transitional  
8 employees have been treated fairly?

9 A Yes.

10 Q Dave Adams has made comments that  
11 reflect that he thinks that the Ford way of doing  
12 things isn't the right thing to do; is that right?

13 A Yeah, I've heard that.

14 Q Has he ever said that he wanted to get  
15 the Ford influence off the plant floor?

16                   A            He -- the characterization -- he didn't  
17                   say it that way. The characterization has been that,  
18                   you know, Ford has had a very underperforming plant  
19                   that was going to be closed and, you know, it had a lot  
20                   of management practices, a lot of mass production  
21                   characteristics that just weren't competitive and so  
22                   the Ford influence is strictly the turnaround  
23                   expectation and, you know, the context of saying we've  
24                   got to get rid of the Ford influence is really just to  
25                   ensure that there's a viable, competitive business

1                   going on there.

2                   Q            This had come up in an earlier  
3                   deposition, but have you heard Mr. Adams say that we've  
4                   got to get some new blood in here to kind of change the  
5                   culture of the plant?

6                   A            Oh, absolutely. And that was a key  
7                   strategy. As the joint venture was -- was put  
8                   together, there was a -- you know, a clear intent to  
9                   retain a good portion of Ford workers, this is salaried  
10                   leadership, bring some German expatriates, and then  
11                   bring some outsiders, and so it was sort of a three-  
12                   legged stool as you put the leadership team together.

13                   Q            Has he never used a word like the Ford  
14                   taint or anything like that?

15                   A            Ford --

16                   Q            The Ford taint on the floor, have you  
17                   ever heard that before? Had you ever used that phrase  
18                   before?

19                   A            No. I thought you said paint. I'm  
20                   sorry.

21                   Q            No. I said taint, T-A-I-N-T.

22                   A            I understand. No, I never did.

23                   Q            When you came on board in '99, you very  
24                   early on had conversations with Mr. Adams where he  
25                   explained we want to bring in some new blood, some new

1       hires?

2           A        Oh, absolutely.

3           Q        And he wanted to try to diminish what  
4       had been the Ford influence in the plant?

5           A        I don't -- diminish isn't the right  
6       word in my mind. I think it was really to convert the  
7       plant. I mean, it was -- the plant was going to be  
8       closed and changes had to be made.

9           Q        Have you ever made any comments that  
10      you think Ford employees have too many benefits?

11        A        No.

12        Q        Mr. Newark, I appreciate this may be  
13      difficult, but have you said things to various people,  
14      either people you've worked for or people under you,  
15      where you've expressed some sort of bias against the  
16      way that Ford does things and against Ford employees  
17      that are stuck in their ways or anything like that?

18        A        No. I mean, any -- any disparaging  
19      comments I would make would be at the Ford system and,  
20      you know, how this was processed, how the Japanese came  
21      in and screwed up things and, you know, the whole, you  
22      know, management practices. It wouldn't be directed at  
23      a workforce or it's not directed at the, you know, UAW  
24      hourly Ford employees or the Ford transition salaried.  
25      It's directed at the system that they created and,

1        quite honestly, the tolerance that they had to accept,  
2        you know, pretty low standards and low performance.

3                    Q        If somebody said that you often make  
4        derogatory comments about Ford, they'd be lying or  
5        what?

6                    A        Yeah, I think they'd be lying.

7                    Q        In terms of Ford transitional employees  
8        being treated fairly, do you think that Mr. Rick Ervin  
9        has been treated fairly?

10                  A        Yes.

11                  Q        Rick came in at the manager level,  
12        right, when you started?

13                  A        Yes.

14                  Q        And then, I guess, he got moved to HR?

15                  A        He's had a variety of assignments since  
16        I've been there, but he -- he was actually in the Ford  
17        system a superintendent or a MPS, which was more of an  
18        administrative kind of a job, a manufacturing planning  
19        specialist. And then he's had lean manufacturing or  
20        lean processing and business management  
21        responsibilities since I've been there and did also do  
22        a training manager assignment in human resources.

23                  Q        He's now a lean processing manager; is  
24        that right?

25                  A        Yes.

1 Q That's a step down from where he was  
2 when he was an MPS, isn't it?

3 A Actually the lean jobs are a little  
4 higher.

5 Q The stint in HR, I guess, was a bit of  
6 a step down, wasn't it?

7 A I'm not sure how you define a step  
8 down. Are you talking salary-wise, are you talking  
9 scope and responsibility?

10 Q Scope and responsibilities.

11 A I wouldn't view it that way. Perhaps  
12 he did, but I wouldn't.

13 Q He's a top performer, isn't he?

14 A He's an average performer.

15 Q Well, if you've got problems in certain  
16 areas of the plant, isn't he someone that you send over  
17 to try and correct?

18 A No, not really.

19 Q All right. You've had conversations  
20 with Mr. Ervin and Mr. Adams about the different moves  
21 that he's been asked to make, right?

22 A Yes.

23 Q And I guess Rick expressed a concern  
24 that he thought he was -- he didn't know why he was  
25 being treated the way he was.

1                   A           Yes.

2                   Q           Did you try to explain to him that --  
3                   what did you explain to him, if anything?

4                   A           I'm not sure which move you're  
5                   referring to but --

6                   Q           Well, didn't he in the past six months  
7                   have a meeting with you and Mr. Adams?

8                   A           Yes.

9                   Q           And he was, I think, being moved to LPM  
10                   at that point.

11                  A           He was in the training manager job at  
12                  the time, and interestingly, we were moving him into a  
13                  lean processing manager, where he was the MPS when the  
14                  joint venture started.

15                  Q           In that meeting had he expressed a  
16                  concern about what was going on?

17                  A           It's -- it's -- the reason I'm  
18                  reflecting on it is that you mentioned that the  
19                  training manager was a demotion and -- or a step down  
20                  and at the same time I'm recalling the meeting where we  
21                  needed him to be a lean processing manager. Yeah, he  
22                  was not sure that that was consistent with his skill  
23                  set, so he viewed that one as a step down.

24                  Q           Well, I wasn't saying which one was a  
25                  step down.

1                   A           Right.

2                   Q           I was asking you what you perceived.

3                   A           I don't think any of them are step  
4                   downs and I think the lean -- of all of them, the lean  
5                   manager would be a step up from the MPS by the way  
6                   we've restructured the expectations of the job.

7                   Q           Apparently he didn't see it that way?

8                   A           I would agree with that.

9                   Q           Okay. And you and Mr. Adams tried to  
10                  assure him that it wasn't a step down, I take it?

11                  A           Yes.

12                  MR. SIMON: Off the record. We'll just  
13                  take a quick break and confer with my clients.  
14                  We're probably just about there.

15                  (RECESS)

16                  MR. SIMON: We're back on the record.

17                  Mr. Newark, I think we're almost done today.

18                  BY MR. SIMON:

19                  Q           I was just going to ask you: Have you  
20                  made any comments to anyone else there at the plant  
21                  about this lawsuit and did you ever tell somebody that  
22                  if my clients win the lawsuit, they'll be out of the  
23                  plant?

24                  A           I'm sorry. If -- I said --

25                  Q           Did you ever say that if they win the

1       lawsuit, that would be good, then we can get them out  
2       of the plant or anything like that at all?

3               A            No.

4               Q            Did you ever discuss outside of your  
5       lawyers about -- have you ever discussed with Hassan  
6       Saleh or perhaps other managers about what would happen  
7       if these group of people, which are 15 employees, if  
8       they left the plant?

9               A            No.

10              Q            No conversation like that whatsoever?

11              A            I -- I mean, we have conversations  
12       regarding, you know, if people leave or if this person  
13       does this or whatever, but nothing wholesale, as I  
14       understand your question, to the -- to the people in  
15       the lawsuit.

16              Q            I mean, outside of the presence of your  
17       lawyers or having nothing to do with anything your  
18       lawyers asked you to look into, have you ever made any  
19       comments with other people at Ford about anything about  
20       this lawsuit?

21              A            You know, I've had some relatively  
22       short conversations with folks like Len Sennish and,  
23       you know, maybe Mark Bugajski maybe, Herb, as an  
24       example.

25              Q            What kind of things have you talked

1           about?

2           A           Just sort of, you know, what's up. And  
3           I really have not known much about this whole lawsuit.  
4           I didn't know all the parties involved until this week.

5           Q           Were you concerned that you have this  
6           many employees with a lawsuit against you?

7           A           I'm very concerned.

8           Q           Do you think that the situation should  
9           have been resolved before there was a lawsuit?

10          A           In general, yes. I don't know all the  
11          -- I'm not aware of all the details, so -- of all the  
12          complaints.

13          Q           Well, I mean, but you had heard there  
14          was some disgruntlement before the lawsuit was filed,  
15          right?

16          A           Yes, yes.

17          Q           Do you know if anyone tried to address  
18          those concerns, that disgruntlement, however you want  
19          to characterize it, before the lawsuit was filed?

20          A           Well, I like to believe that I have. I  
21          think a lot of us have worked to understand, you know,  
22          the changes that are needed and what it takes to turn  
23          around the company and those kinds of things.

24                    We had --I mentioned at the outset, you  
25                    know, it's a pretty significant task we've undertaken

1 to turn the plant around and it's been a lot of hard  
2 work by a lot of people and so the whole working  
3 conditions, the whole -- you know, to me the overtime,  
4 notwithstanding the pay issue, just the hours that  
5 people are working and, you know, quality of life. So  
6 there's been a lot of effort to try to understand what  
7 it takes to -- the plant is designed and should be  
8 running on less than a five-day work week, so --

9 Q Well, with respect to Exhibit 2, the  
10 summary --

11 A I've got it here.

12 Q -- brochure, I mean, did you take any  
13 steps to try and address people's concerns that they  
14 thought the company wasn't living up to what they said  
15 in that brochure?

16 A No. I actually never heard that there  
17 was an issue with, you know, the way people felt, that  
18 there were promises or stuff made. And so I knew there  
19 were, you know, transition agreements, if you will, or,  
20 you know, a grow in pay kind of thing, but I didn't  
21 know that there was a specific set of anything else  
22 that people felt like was being violated or reduced or  
23 anything.

24 Q This may be the final question. With  
25 respect to Mr. Saleh then, if he testified that he had

1 a conversation with you about the prospect of these 15  
2 employees leaving the plant, your testimony is you just  
3 don't recall it?

4 A I don't recall that.

5 Q When you had the issue with the  
6 overtime last year with the budget, did anyone approach  
7 you right after that happened and complain or --

8 A Oh, yes.

9 Q Including some of the people in this  
10 lawsuit?

11 A Yeah. Ron Pearce is one that I  
12 remember vocally complaining. Till this week I didn't  
13 know he was in the lawsuit.

14 Q What did you tell him to try to address  
15 his concern?

16 A I don't recall specifically. I mean,  
17 it would have been the same, you know, budget and we  
18 have to get the place fixed and, you know, it's a --  
19 it's a very difficult job we're under and, you know, we  
20 have got to manage within budgets and learn how to do  
21 that.

22 MR. SIMON: That was my last question.

23 Thank you very much.

24 THE WITNESS: Thank you.

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Dick Newark

C-E-R-T-I-F-I-C-A-T-I-O-N

STATE OF OHIO,

COUNTY OF HAMILTON, To-wit;

I, Susan K. Lee, CVR-CM, Court Reporter and Notary Public in and for the State of Ohio, do hereby certify;

That on the 24th day of July, 2003, there appeared before me pursuant to Notice and agreement of counsel, **DICK NEWARK**, as a witness in the previously entitled cause;

That the said witness was sworn by me and examined to tell the truth, the whole truth, and nothing but the truth in said cause;

That the deposition was taken by me via Stenomask and electronic recording and the foregoing 111 pages contain a true, full and correct transcription of all the testimony of said witness;

That the deposition was submitted to counsel for the witness for reading and signature;

That I am not related to or in any way associated with any of the parties to said cause of action, or their counsel, and that I am not interested in the event thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of August, 2003.

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Susan K. Lee, CVR-CM  
My commission expires:  
August 30, 2004